

SIXTY-SIXTH DAY
(Monday, May 8, 1995)

The Senate met at 10:00 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Armbrister, Barrientos, Bivins, Brown, Cain, Ellis, Gallegos, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Luna, Moncrief, Montford, Nelson, Nixon, Patterson, Ratliff, Rosson, Shapiro, Sibley, Sims, Truan, Turner, Wentworth, West, Whitmire, Zaffirini.

Absent-excused: Madla.

A quorum was announced present.

The Reverend Susan McCann, Episcopal Theological Seminary of the Southwest, Austin, offered the invocation as follows:

Almighty God, the fountain of wisdom, whose will is good and gracious, and whose law is truth: we humbly beseech Thee that we may always prove ourselves a people mindful of Thy favor and glad to do Thy will. Bless our land with honorable industry and sound learning. Save us from violence, discord, and confusion, from pride and arrogance, and from every evil way. Defend our liberties, and fashion into one united people the multitudes brought hither out of many kindreds and tongues. Endue with the spirit of wisdom and charity those to whom in Thy name we entrust the authority of government, that there may be justice and peace at home, and that, through obedience to Thy law, we may show forth Thy praise among the nations of the earth. Guide and bless the Senators in the Legislature of this State of Texas, that with steadfast purpose they may faithfully serve to promote the well-being of all people, and may enact such laws as shall please Thee, to the glory of Thy name, through Jesus Christ our Lord. Amen.

On motion of Senator Truan and by unanimous consent, the reading of the Journal of the proceedings of Friday, May 5, 1995, was dispensed with and the Journal was approved.

LEAVE OF ABSENCE

On motion of Senator Truan, Senator Madla was granted leave of absence for today on account of illness.

CO-AUTHOR OF SENATE BILL 1649

On motion of Senator Luna and by unanimous consent, Senator Gallegos will be shown as Co-author of S.B. 1649.

MESSAGE FROM THE HOUSE

House Chamber
May 8, 1995

Mr. President: I am directed by the House to inform the Senate that the House has passed the following:

S.B. 1, Relating to public education and to a substantive revision of Titles 1 and 2, Education Code, governing public education, including conforming amendments, repeals, and penalties. (As substituted and amended)

S.B. 297, Relating to the change of the name of the San Antonio State Chest Hospital to the Texas Center for Infectious Disease.

S.B. 415, Relating to a county or precinct officer who overcharges a person a fee. (As amended)

S.B. 424, Relating to the payment in periodic installments of certain penalties owed by certain businesses for violations of law under the jurisdiction of the Texas Natural Resource Conservation Commission.

S.B. 694, Relating to the exemption from tuition of a resident student enrolled in the Southwest Collegiate Institute for the Deaf.

S.B. 717, Relating to the authority of a county judge in counties with a population greater than 1,000,000 to delegate certain responsibilities.

S.B. 770, Relating to fees collected by certain county officers. (As amended)

S.B. 875, Relating to the Sul Ross State University Uvalde Study Center.

S.B. 934, Relating to the administration, powers, duties, and operation of the Starr County Hospital District of Starr County, Texas.

S.B. 1018, Relating to a cemetery on land owned by The Texas A&M University System.

S.B. 1070, Relating to legislative space needs and space management. (As amended)

S.B. 1241, Relating to the operation of the Muenster Hospital District.

S.B. 1281, Relating to security devices in housing owned or operated by certain public or private colleges or universities.

S.B. 1299, Relating to abolition of the board of regents of East Texas State University and the transfer of the institutions under that board to The Texas A&M University System.

S.B. 1327, Relating to the conveyance of certain real property by the Texas Department of Mental Health and Mental Retardation.

S.B. 1328, Relating to the release of the state's reversionary interest in certain real property located in Howard County.

S.B. 1387, Relating to the transfer and enforcement of ad valorem tax liens.

S.B. 731, Relating to the authority to dissolve the Oak Ridge Municipal Utility District and the assumption of its assets and obligations by a municipality.

S.B. 1284, Relating to regulation of the business of title insurance.

S.B. 1627, Relating to the dissolution of the DeLeon Hospital District and the Comanche County Hospital District and the creation of the Leon Valley Hospital District; authorizing a tax; granting the authority to issue bonds; and granting the power of eminent domain.

S.C.R. 126, Calling upon all Texans to support the Texas Military Museum and Archives.

S.C.R. 132, Commending the life and the career of Judge Abner McCall on the occasion of his 80th birthday.

S.C.R. 141, Requesting the governor to return **S.B. 550** to the Senate for further consideration.

H.C.R. 4, Authorizing the State Preservation Board to provide for the planting of a tree on the Capitol grounds in memory of Dorothy Sanders.

H.C.R. 128, Re-creating the Red River Boundary Commission.

H.C.R. 190, Congratulating the Texas State Artists for 1994 and 1995 upon their selection.

H.C.R. 184, Honoring Dr. Leslie Kilby Green on the occasion of his retirement.

H.C.R. 175, Honoring Amy Grunwald.

H.B. 244, Relating to ensuring that the state and its local governments and citizens receive all available federal assistance in connection with the reduction, closure, or conversion of federal military bases in this state.

H.B. 340, Relating to directing the Texas Veterans Commission to determine the need for a system of state residential care facilities for veterans who are disabled.

H.B. 483, Relating to the making and reporting of certain political contributions and expenditures.

H.B. 742, Relating to the resale of certain land acquired by a political subdivision.

H.B. 768, Relating to statutory court judges and district judges exchanging benches and transferring cases.

H.B. 774, Relating to certain technical corrections to the Insurance Code.

H.B. 817, Relating to identification of individuals executing certain documents.

H.B. 828, Relating to the authority of a county to regulate certain fireworks.

H.B. 841, Relating to depositories for trust funds held by county and district clerks.

H.B. 895, Relating to the conveyance of certain state-owned real property in Wilson County.

H.B. 1205, Relating to the funding of the Texas Real Estate Research Center from certain real estate broker and salesman fees.

H.B. 1225, Relating to registration and insurance requirements for a former military vehicle.

H.B. 1293, Relating to the liability of entities that provide address database information for 9-1-1 services.

H.B. 1375, Relating to the punishment for the purchase, possession, or consumption of alcoholic beverages by a minor.

H.B. 1417, Relating to benefits for certain survivors of deceased police officers under the police officers' pension systems of certain cities.

H.B. 1481, Relating to the county courts at law of Collin County.

H.B. 1714, Relating to eligibility of libraries for reduced rates for telecommunications services.

H.B. 1717, Relating to benefits payable by retirement systems for police officers in certain municipalities.

H.B. 1763, Relating to allowing the holder of a brewpub license to participate in an organized competition, review, or judging.

H.B. 1774, Relating to the statutory county courts in Cameron County.

H.B. 1810, Relating to membership on the boards of trustees of retirement systems for police officers in certain municipalities.

H.B. 1819, Relating to approval of alcohol and drug abuse driving awareness programs for personal automobile insurance discounts.

H.B. 1844, Relating to the bond and oath requirements applicable to constables.

H.B. 1885, Relating to solicitation transactions that take place outside a merchant's place of business.

H.B. 1943, Relating to the fee for production or certification of documents.

H.B. 2289, Relating to the representation of certain indigent persons by public defenders in Wichita County.

H.B. 2314, Relating to the election of the members of the board of trustees of South Texas Community College.

H.B. 2315, Relating to the regulation of energy and material recovery and of gas recovery.

H.B. 2352, Relating to an exemption from the application of certain requirements related to the practice of cosmetology for persons who provide services at a fashion photography studio.

H.B. 2398, Relating to duties of the district clerk.

H.B. 2463, Relating to the taking of an oath by a special judge serving a county court.

H.B. 2487, Relating to certain fees charged for consumer credit purposes.

H.B. 2501, Relating to insurance requirements for certain persons who engage in a business regarding fire alarms or fire detection devices.

H.B. 2507, Relating to the lease of the Amarillo campus of the Texas State Technical College System to Amarillo College.

H.B. 2540, Relating to allowing the Texas State Library and Archives Commission to assist public libraries with public information technology grants.

H.B. 2553, Relating to the regulation of bed and breakfast establishments as food service establishments.

H.B. 2580, Relating to the use of certain sales and use tax revenue to support a public junior college.

H.B. 2613, Relating to the exemption from ad valorem taxation of property owned by a religious organization.

H.B. 2640, Relating to uniform dates for adding or dropping a course conducted by a public junior college.

H.B. 2661, Relating to the requirement that certain offices of an appraisal review board not be located in the same building in which an office of an appraisal district is located.

H.B. 2684, Relating to the removal of a member of the board of a police officers' pension system in certain cities.

H.B. 2686, Relating to administration of and adoption of rules by retirement systems for police officers in certain municipalities.

H.B. 2698, Relating to the provision of long-term care services.

H.B. 2754, Relating to the definition of portable building unit for certain purposes.

H.B. 2781, Relating to the appointment of bailiffs for certain district courts.

H.B. 2860, Relating to the power of certain school districts to grant tax abatements.

H.B. 2873, Relating to the Nacogdoches County Hospital District.

H.B. 2898, Relating to the inspection and maintenance of dental X-ray equipment.

H.B. 2940, Relating to the appraisal and ad valorem taxation of certain types of personal property.

H.B. 2969, Relating to the acquisition and disposition of land and facilities by a municipality and to the issuance of municipal bonds.

H.B. 2980, Relating to coverage for district judges and volunteer fire departments under the County Government Risk Management Pool.

H.B. 2989, Relating to the circumstances under which a county may purchase an item without following the statutory competitive purchasing procedures.

H.B. 3053, Relating to the operation of the Upper Colorado River Authority.

H.B. 3079, Relating to depositing funds in the housing trust fund and the use of the housing trust fund.

H.B. 3120, Relating to certain nursing facilities receiving reimbursement under the state Medicaid program.

H.B. 3165, Relating to an additional security fee collected in Webb County.

H.B. 3188, Relating to the county courts at law in Midland County.

H.B. 3195, Relating to the Coryell County juvenile board.

H.B. 3199, Relating to the duties of the secretary of state.

H.B. 3207, Relating to the exemption of certain personal property from seizure for the satisfaction of debts.

H.B. 3196, Relating to fees received by a judge or justice for certain services.

S.B. 1236, Relating to the sale of beer within assigned territories.
(As substituted and amended)

Respectfully,

Cynthia Gerhardt, Chief Clerk
House of Representatives

BILLS AND RESOLUTIONS SIGNED

The President announced the signing of the following enrolled bills and resolutions in the presence of the Senate after the captions had been read:

S.B. 360	H.B. 971
H.B. 85	H.C.R. 131
H.B. 1465	H.C.R. 116
H.B. 2355	H.C.R. 115

HOUSE BILLS ON FIRST READING

The following bills received from the House were read first time and referred to the committees indicated:

H.B. 668 to Committee on Economic Development.

H.B. 1111 to Committee on Health and Human Services.

H.B. 2294 to Committee on Natural Resources.

H.B. 2441 to Committee on Natural Resources.

SENATE RULE 7.21 SUSPENDED

(Printing Rule)

On motion of Senator Ratliff and by unanimous consent, Senate Rule 7.21 was suspended as it relates to the printing of the House amendments to **S.B. 1**.

ORDERED NOT PRINTED

On motion of Senator Ratliff and by unanimous consent, the House amendments to **S.B. 1** were ordered not printed in the Senate Journal.

SENATE BILL 1 WITH HOUSE AMENDMENTS

Senator Ratliff called **S.B. 1** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

The amendments were read.

Senator Ratliff moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **S.B. 1** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Ratliff, Chair; Armbrister, Luna, Sibley, and Nelson.

PERMISSION TO MEET GRANTED

On motion of Senator Ratliff and by unanimous consent, the Conference Committee on **S.B. 1** was granted permission to meet while the Senate was in session.

SENATE BILL 776 WITH HOUSE AMENDMENTS

Senator Brown called **S.B. 776** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Amendment

Amend **S.B. 776** by substituting in lieu thereof the following:

**A BILL TO BE ENTITLED
AN ACT**

relating to an emergency appropriation from the waste tire recycling fund to the Texas Natural Resource Conservation Commission for the fiscal year ending August 31, 1995.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. In addition to amounts previously appropriated under the current General Appropriations Act (page I-219, Chapter 1051, Acts of the 73rd Legislature, 1993) or other law for the current fiscal biennium, the sum of \$9.34 million is appropriated for that period to the Texas Natural Resource Conservation Commission from the waste tire recycling fund.

SECTION 2. This Act takes effect only if the 74th Legislature, at its regular session, enacts **H.B. 2846** or **S.B. 1440** and either bill becomes law within the meaning of Section 14, Article IV, Texas Constitution. If neither bill becomes law, this Act has no effect.

SECTION 3. This Act takes effect on the first date a bill described by Section 2 of this Act becomes law.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

Floor Amendment No. 1

Amend **C.S.S.B. 776** as follows:

(1) Strike **SECTIONS 2 and 3** and substitute the following:

SECTION 1. Section 361.471, Health and Safety Code, is amended to read as follows:

Sec. 361.471. **DEFINITIONS.** In this subchapter:

(1) "Fund" means the waste tire recycling fund.

(2) "Green tire" means the casing form of a tire that has not been cured or does not have a tread or marking of any kind.

(3) "Good used tire" means a used tire, not including a recapped or retreaded tire, suitable for continued use for its original intended purpose.

(4) "Manufacturer reject tire" means a tire rendered defective in the manufacturing process, whether the tire is determined to be defective before or after consumer purchase.

(5) ~~(4)~~ "Mobile tire shredder" means equipment mounted on wheels or skid-mounted and hauled from place to place to split, shred, or quarter used or scrap tires.

(6) [(5)] "Scrap tire" has the meaning assigned by Section 361.112.

(7) "Waste tire energy recovery facility" means a facility at which whole used or scrap tires or shredded tires are used as a fuel, including:

(A) a cement kiln;

(B) a utility boiler;

(C) a pulp and paper mill;

(D) a cogeneration facility; or

(E) another facility designated by the commission.

(8) [(6)] "Waste tire facility" means a facility registered by the commission under Section 361.477 at which scrap tires are collected and shredded to facilitate the future extraction of useful materials for recycling, reuse, or energy recovery and are stored in a waste tire storage facility or a facility that recycles, reuses, or recovers the energy from the shredded tire pieces.

(9) [(7)] "Waste tire processor" means:

(A) a waste tire facility; or

(B) a mobile tire shredder that splits, shreds, or quarters tires and deposits the split, shredded, or quartered tires for eventual recycling, reuse, or energy recovery at:

(i) a waste tire storage facility registered by the commission under Section 361.112; or

(ii) a waste tire facility.

(10) [(8)] "Waste tire storage facility" means a facility registered by the commission under Section 361.477 at which whole used or scrap tires or shredded tire pieces are collected and stored to facilitate the future extraction of useful material for recycling, reuse, or recovery. The term does not include a marine dock, rail yard, or trucking facility used to store tires that are awaiting shipment to a person for recycling, reuse, or energy recovery for 30 days or less.

(11) [(9)] "Waste tire transporter" means a person who collects and transports used or scrap tires or scrap tire pieces for storage or disposal.

(12) [(10)] "Weighed tire" means a unit of weight for shredded scrap tires that is equal to 18.7 pounds.

SECTION 2. Section 361.472, Health and Safety Code, is amended by amending Subsections (a), (c), (d), (h), (i), and (j) and by adding Subsection (k) to read as follows:

(a) Until September 1, 1999, a [A] wholesale or retail tire dealer, a person in the business of selling good used tires for use on a vehicle, or a person in the business of selling used vehicles or used vehicle parts who sells or offers to sell new or good used tires not for resale shall collect at the time and place of sale a waste tire recycling fee for each [new] tire sold as follows:

(1) \$2 for each new tire that has a rim diameter of 12 inches or more but less than 17.5 inches and \$1 for each good used tire that has a rim diameter of 12 inches or more but less than 17.5 inches;

(2) \$3.50 for each new tire that has a rim diameter of 17.5 inches or greater, other than an off-the-road tire intended for use on heavy

machinery, including an earthmover, a loader/dozer, a grader, or mining equipment [but less than 25 inches]; and

(3) \$2 for a new motorcycle tire, regardless of the rim diameter.

(c) A fee may not be assessed for:

(1) a recapped or retreaded tire; or

(2) a bicycle tire.

(d) A person [dealer] required to collect a fee under this section:

(1) shall list as a separate item on an invoice a fee due under this section; and

(2) except as provided by Subsection (e), on or before the 20th day of the month following the end of each calendar month and on a form and in the manner prescribed by the comptroller, shall file a report with and shall remit to the comptroller the amount of fees collected during the preceding calendar month.

(h) A waste tire recycling fee is imposed on the storage, use, or consumption in this state of a [new] tire at the same rate as provided by Subsection (a), except when purchased for the purpose of resale.

(i) A person storing, using, or consuming a [new] tire in this state is liable for the waste tire recycling fee as defined in this section and is responsible for reporting and paying the fee to the comptroller in the same manner as a person required to collect this fee, as provided in Subsection (d)(2) and (e).

(j) A person storing, using, or consuming a [new] tire in this state is not further liable for the waste tire recycling fee imposed by Subsection (a) if the person:

(1) pays the fee to:

(A) a person who is required to collect the fee under Subsection (a) and who is [wholesaler or retailer] engaged in business in this state; or

(B) another person authorized by the comptroller to collect the fee; and

(2) receives [from the wholesaler, retailer, or other person] a purchaser's receipt from the person to whom the fee was paid.

(k) Effective September 1, 1999, a wholesale or retail tire dealer, a person in the business of selling good used tires for use on a vehicle, or a person in the business of selling used vehicles or used vehicle parts who sells or offers to sell new or good used tires not for resale shall collect at the time and place of sale a waste tire recycling fee for each tire sold as follows:

(1) \$1 for each new tire that has a rim diameter of 12 inches or more but less than 17.5 inches and 50 cents for each good used tire that has a rim diameter of 12 inches or more but less than 17.5 inches;

(2) \$2.50 for each new tire that has a rim diameter of 17.5 inches or more, other than an off-the-road tire intended for use on heavy machinery, including an earthmover, a loader/dozer, a grader, or mining equipment; and

(3) \$1 for a new motorcycle tire regardless of the rim diameter.

SECTION 3. Section 361.4725, Health and Safety Code, is amended to read as follows:

Sec. 361.4725. REGISTRATION; FEE. A person who applies to the commission to register a waste tire storage facility, a waste tire energy recovery facility storage site, a waste tire recycler or a fixed or mobile tire processor, or applies to renew or amend the registration, must pay a fee of \$500.

SECTION 4. Section 361.473, Health and Safety Code, is amended by adding Subsection (d) to read as follows:

(d) The comptroller and commission jointly shall develop and implement an enforcement program to pursue the collection of delinquent fees assessed under Section 361.472.

SECTION 5. Section 361.475, Health and Safety Code, is amended by amending Subsections (d), (e), (f), and (i) to read as follows:

(d) The fund shall ~~[may]~~ be used to ~~[pay]~~:

(1) pay waste tire processors, waste tire energy recovery facility owners or operators or waste tire recyclers that meet the requirements for payment under Section 361.477, 361.4771 or 361.4772 and rules adopted under those sections. ~~[that section];~~

(2) pay the commission's reasonable and necessary administrative costs of performing its duties under this subchapter in an amount not to exceed six percent of the money annually accruing to the fund; ~~[and]~~

(3) pay the comptroller's reasonable and necessary administrative costs of performing the comptroller's duties under this subchapter in an amount not to exceed two percent of the money annually accruing to the fund; and

(4) provide grants to waste tire energy recovery facility owners or operators to cover equipment capital investment costs and equipment installation costs to enable a facility to use tire shreds as fuel.

(e) Registration fees received under Section 361.4725 shall be allocated to the commission for its reasonable and necessary costs associated with reviewing applications for registration of and with registering:

(1) fixed and mobile tire processing facilities and storage sites;

(2) waste tire energy recovery facilities and storage sites; and

(3) waste tire recyclers.

(f) The fund may not be used to reimburse shredding or burning of:

(1) innertubes;

(2) scrap rubber products;

(3) green tires;

(4) industrial solid waste, excluding waste tires;

(5) oversized tires, as defined by commission rule, unless the oversized tires are collected from a priority enforcement list site; ~~[or]~~

(6) manufacturer reject tires; or

(7) nonpneumatic tires.

(i) If the commission has reason to believe that the ~~[fund]~~ balance of money appropriated from the fund will fall below \$500,000, the commission may:

(1) suspend the requirement to reimburse priority enforcement list tires shredded in excess of the minimum percentage identified in Section 361.477(c)(3)(C); ~~or~~

(2) limit the number of waste tires for which a processor or waste tire energy recovery facility owner or operator or waste tire recycler will be reimbursed; or

(3) discontinue paid carryover under Section 361.477(d) and (j) and Section 361.4771(f).

SECTION 6. Sections 361.477(b), (c), (d), (g), (h), (i), (j), (k), and (l), Health and Safety Code, are amended to read as follows:

(b) If the total number of used or scrap tires or tire pieces contained in illegal scrap tire sites that are identified on the priority enforcement list is below 2,500,000 ~~[500,000]~~ tires, the commission may pay ~~[more than]~~ 85 cents or an appropriate amount determined by the commission for each weighed tire to processors with whom the commission has contracted to remove and shred scrap tires and scrap tire pieces from priority enforcement list sites. The 2,500,000 ~~[500,000]~~ tire limit does not include those tires contained in sites under commission enforcement or attorney general action or that require corrective action or remedial action in response to a release or threat of release of hazardous substances. In acting under this subsection, the commission may contract with processors on a regional or site-specific basis. The contracts shall be procured through a competitive bid process conducted in accordance with the provisions of the State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes) applicable to contracts for services. Notwithstanding Subsection (c), while the commission is using a competitive bid process for assignment of sites listed on the priority enforcement list, the priority enforcement list requirements of Subsection (c)(3)(C) do not apply to an application for payment. The commission may elect not to enter into contracts under this subsection. The contracts may be only for the removal and shredding of tires from priority enforcement list sites.

(c) A waste tire processor that desires to receive payment under this section for tires shredded by the processor during a calendar month must:

(1) apply to the commission for registration in accordance with forms prescribed by the commission;

(2) apply to the commission for payment on forms prescribed by the commission or, on a voluntary basis, apply by a removable storage medium stored in an industry standard file format acceptable to the commission;

(3) demonstrate as required by rules adopted under this section that:

(A) all tires for which payment is sought have been shredded to an industry standard two-inch minus [x] particle size or, if approved by the commission, shredded to an alternative particle size set by a contract requirement related to recycling or end use of the particles ~~[not larger than nine square inches]~~;

(B) not less than 50 [25] percent of those tires were collected from generators, unless this requirement is suspended by the commission on consideration of service needs contained in a contract drafted under Subsection (b); and

(C) if the total number of whole used or scrap tires or shredded tire pieces contained in illegal waste tire sites that are identified on the priority enforcement list exceeds 2,500,000 [500,000] tires for more than 60 [30] consecutive days, not less than 15 percent and not more than 30 percent of those tires were collected from scrap tires sites listed on the priority enforcement list;

(4) provide any other information the commission determines is needed to accomplish the purposes of this subchapter, including a monthly report of scrap tires or tire pieces shredded, subtotaled by tire count or weight, for each generator number and priority enforcement list number;

(5) demonstrate that energy recovery activities in the state are in compliance with applicable air emission control rules and standards [~~as adopted by the Texas Air Control Board~~]; and

(6) provide financial assurance deemed adequate by the commission that corresponds to:

(A) the payment appropriate for the number of scrap tires the processor anticipates shredding in the next calendar month; or

(B) the number of scrap tires the waste tire storage site owner or operator anticipates accepting for storage in the next calendar month.

(d) A waste tire processor that in any month exceeds the minimum requirement of Subsection (c)(3)(C) may [~~shall~~] receive [~~a~~] credit only for paid carryover in [~~for~~] the amount in excess of the requirement that may be used to meet the minimum requirement during a later month. The commission by rule may prescribe the method of applying credits accrued under this subsection.

(g) Except as provided by [~~Notwithstanding~~] Section 361.486, the commission may reimburse a processor for shredded scrap tires if the processor has a binding agreement to deliver the shredded scrap tires to a person to recycle or reuse or to use for energy recovery within 180 days after the date of reimbursement. The commission shall suspend subsequent shredding reimbursements to a processor that fails to deliver the tire shreds to an identified end-use market before the 181st day after the date of reimbursement unless the Executive Director determines that the failure to deliver was caused by an Act of God or unforeseen business events. The commission may not resume suspended reimbursements until the processor makes all delinquent deliveries.

(h) The commission may not pay a waste tire processor for processing scrap tires if [~~the commission determines that the processor~~]:

(1) the commission field office and central office program staff have not reviewed and approved for further processing by the commission all information submitted to the commission by the waste tire processor as required by Subsection (c) or rules adopted under this section; or

(2) the commission determines that the processor:

(A) has not provided adequate financial assurance;

(B) [(2)] does not have adequate fire protection; or

(C) [(3)] is causing an imminent danger to public health or welfare.

(i) A waste tire processor that in any month exceeds the generator percentage of the allocated number of waste tires assigned for reimbursement purposes may accrue credit only for paid generator carryover in the amount in excess of the requirement that may be used to meet the allocation maximum during a later month. The commission by rule may prescribe the method of applying carryover credit accrued under this section [shall issue to an applicant all processing and storage registrations necessary to begin operations and obtain reimbursement from the fund if the applicant, on or before March 10, 1993:

[(1) had an application pending for a new processing facility that was reviewed by the commission and found to be in general technical compliance;

[(2) had an application pending for a new storage facility with a total capacity in excess of 7 million waste tire units; and

[(3) had expended or committed in excess of \$1 million in total project costs].

(j) The commission shall adopt rules to manage payment from the fund to prevent depletion of the fund. Rules adopted under this subsection shall consider[:

[(1)] appropriate payments to processors that reflect the varying amounts of money available in the fund. In any allocation adopted for processors under this section, the commission shall consider the monthly average percentage of shredded tires the processor has forwarded to an end use or recycling market. In addition, the commission may consider the historical average number of tires for which the processor has been reimbursed and such other factors as may be determined by the commission.

[(2) a waste tire processor's monthly average number of tires for which the processor has been reimbursed historically;

[(3) a waste tire processor's shredding and storage capacity; and

[(4) the date the waste tire processor was registered].

(k) [If a waste tire processor does not fully use its monthly allocation for reimbursement, the commission may assign the unused portion of the allocation to another waste tire processor who can demonstrate having underutilized shredding and storage capacity available for service to rural counties in this state:

[(1)] A person receiving payment from the fund may [only] receive more than 85 cents per waste tire unit only under Subsection (b). Notwithstanding Subsection (b):

(1) a person registered as a processor may not receive from the fund more than 85 cents per weighed tire;

(2) a person registered as an energy recovery facility may not receive from the fund more than 85 cents per weighed tire; and

(3) a person registered under the useful product reimbursement program may not receive from the fund more than 85 cents per weighed tire.

SECTION 7. Section 361.4771, Health and Safety Code, is amended to read as follows:

Sec. 361.4771. PAYMENT TO PERSON RECOVERING ENERGY FROM WHOLE WASTE TIRES. (a) The commission each month shall pay a waste tire energy recovery facility owner or operator that burns whole tires and meets the requirements of this section and rules adopted under this section an amount equal to 85 cents for each weighed tire the facility used for energy recovery during the preceding calendar month.

(b) The commission shall adopt rules to implement this section, including rules governing the registration and application procedures. The rules shall include a voluntary alternative process for making a payment application by the use of an industry standard file format removable storage medium. To receive a payment under this section, a waste tire energy recovery facility owner or operator must:

(1) apply to the commission for registration in the manner and on forms prescribed by commission rule;

(2) apply to the commission for payment in a manner and on forms prescribed by commission rule;

(3) demonstrate that all tires for which the owner or operator applies for payment are whole waste tires;

(4) send the commission a monthly report of the number of whole waste tires used for energy recovery, subtotaled by tire count or by weight attributed to each generator number;

(5) demonstrate that the energy recovery activities comply with applicable air emission control standards and rules;

(6) provide financial assurance as provided by commission rule adequate to reflect the number of waste tires that exceeds the 30-day supply authorized by Section 361.112 that the facility owner or operator anticipates accepting for storage; and

(7) provide the commission any other information the commission requires by rule.

(c) A waste tire energy recovery facility may not store in excess of a 30-day supply of waste tires at a site at which the owner or operator intends to burn or store waste tires until the facility is registered by the commission as a waste tire energy facility storage site.

(d) The commission may not pay a waste tire energy recovery facility owner or operator for using waste tires if:

(1) the commission field office and central office program staff have not reviewed and approved for further processing by the commission all information submitted to the commission by the waste tire energy recovery facility owner or operator as required by Subsection (b) or rules adopted under this section; or

(2) the commission determines that the facility:

(A) has not provided adequate financial assurance;

(B) does not have adequate fire protection; or
(C) is causing an imminent danger to public health
or welfare.

(3) The facility does not have appropriate authorization from the
commission to perform waste tire energy recovery at the facility; or

(4) The facility is not physically capable of performing waste tire
energy recovery.

(e) The commission shall adopt rules to manage payments from the
fund to prevent depletion of the fund. Prior to using any allocation
method authorized under this subchapter, the commission shall pay
reimbursements to processors under Section 361.477 having established
end-use markets, pay reimbursements under this Section and Section
361.4772 before making other payments from the fund.

(f) Demonstrate as required by rules adopted under this section that the
requirement under section 361.477(c)(3)(C) is met. [FOR SHREDDING
OUTSIDE OF STATE. Effective September 1, 1994, the commission may
reimburse a registered waste tire processor for shredding tires generated
in this state and shredded outside this state if the processor:

[(1) meets all requirements that apply to a waste tire processor who
shreds tires within this state;

[(2) monthly reimburses the state for reasonable and necessary
costs incurred by an agency of the state for such related to the out-of-state
facility regulatory activities as are deemed necessary by such agency;

[(3) voluntarily submits to the commission's enforcement authority
as necessary to ensure compliance with this subchapter; and

[(4) agrees to maintain evidence of financial responsibility under
Section 361.479 in an amount equal to twice the amount that would be
required of an in-state waste tire processor].

SECTION 8. Section 361.4772, Health and Safety Code, is amended
to read as follows:

Sec. 361.4772. PAYMENT FOR RECYCLING ~~[BALING]~~ TIRES. (a)
The commission by rule may establish a program to reimburse from the
fund a waste tire recycler in an amount not to exceed 85 cents for each
weighed tire that the waste tire recycler processes to make a useful product
with a certified end market as determined by the commission.

(b) The following items are not products eligible for reimbursement
under a program established under this section:

(1) powdered rubber;

(2) a tire-derived fuel;

(3) buffing dust;

(4) a retreaded or recapped tire; and

(5) an item identified in commission rules as ineligible for
reimbursement [Effective March 1, 1994, a registered waste tire processor
who bales whole tires for energy recovery purposes is eligible for
reimbursement at a rate of 25 cents for each tire if the processor meets
the requirements of this subchapter that apply to a waste tire processor
including provisions for financial assurance for such baled tires. The

~~commission shall adopt rules to determine the amount of financial assurance required under this section to apply to baled tires or whole tires stored for baling. A processor seeking reimbursement under this section for baling tires may not, directly or indirectly, receive additional reimbursement from the fund for the shredding of such baled tires].~~

(c) A waste tire recycler as required by rules adopted under this section must meet the requirements under Section 361.477(c)(3)(C).

SECTION 9. Section 361.479, Health and Safety Code, is amended to read as follows:

Sec. 361.479. EVIDENCE OF FINANCIAL RESPONSIBILITY. (a) A waste tire storage facility registered by the commission [~~under Section 361.112~~] or a waste tire facility that accepts shredded scrap tires for storage or for processing for recycling, reuse, or energy recovery shall submit to the commission evidence of financial responsibility in an amount adequate to assure proper cleanup and closure of the facility.

(b) A waste tire recycling facility owner or operator who anticipates accepting an amount of shredded tire pieces for storage that exceeds the 30-day supply authorized by Section 361.112 shall submit to the commission evidence of financial responsibility in an amount adequate to assure proper cleanup and closure of the facility.

(c) A facility subject to Subsection (a) or (b) shall submit to the commission an estimate of the total amount of shredded [scrap tires and] tire pieces measured by weighed tire that the facility will store or process, the maximum number of out-of-state tires the facility will store, and the estimated cost, using that total amount, of cleaning up and closing the facility.

(d) [(c)] The commission shall evaluate and may amend an estimate submitted under Subsection (c) [(b)] and shall determine for each facility the amount for which evidence of financial responsibility is required.

(e) [(d)] Evidence of financial responsibility may be in the form of:

(1) a performance bond or a letter of credit acceptable to the commission that is from a financial institution, a trust fund, or insurance for a privately owned facility; or

(2) a self-insurance test designed by the commission for a publicly owned facility. A person who makes an initial request for reimbursement from the waste tire recycling fund on or after September 1, 1993, must provide evidence of financial responsibility for the full amount determined under Subsection (d) [(c)].

SECTION 10. Section 361.480, Health and Safety Code, is amended to read as follows:

Sec. 361.480. TIRE COLLECTION FEE PROHIBITED. A waste tire transporter or mobile tire shredder may not charge a fee to a wholesale or retail dealer for collecting for delivery to a waste tire facility, waste tire energy recovery facility, or waste tire recycling facility or for collecting and shredding used or scrap tires a tire dealer accepts from purchasers of tires [accepted] for temporary storage [by the dealer from purchasers of new tires].

SECTION 11. Section 361.481, Health and Safety Code, is amended to read as follows:

Sec. 361.481. PROHIBITION ON OUT-OF-STATE TIRES; PENALTY. (a) A waste tire processor may not claim payment under Section 361.477 for shredding out-of-state tires. A waste tire energy recovery facility owner or operator may not claim payment under Section 361.4771 for burning out-of-state tires. A waste tire recycler may not claim payment under Section 361.4772 for recycling out-of-state tires.

(b) A waste tire generator that the commission determines has used a manifest and commission generator number to pass out-of-state tires is not eligible for the free collection and transportation of waste tires generated at the generator's place of business. In addition to any administrative, civil, or criminal enforcement action, the commission shall require the generator to pay for:

- (1) collection and transportation of generated tires; and
- (2) shredding or burning of generated tires at the applicable rate specified in Section 361.477 or 361.4771.

(c) A waste tire processor or waste tire energy recovery facility owner or operator whom the commission determines has knowingly accepted out-of-state tires on manifests using a commission generator number is subject to an administrative, civil, or criminal enforcement action.

(d) A waste tire transporter that the commission determines has transported out-of-state tires using a commission-approved manifest or transporter number is subject to an administrative, civil, or criminal enforcement action.

SECTION 12. Section 361.482, Health and Safety Code, is amended to read as follows:

Sec. 361.482. PROHIBITION ON DISPOSAL OF SHREDDED TIRES IN LANDFILL. A person [waste tire processor] may not dispose of whole used or scrap tires that are eligible for reimbursement under this chapter or shredded tire pieces for which reimbursement has been paid under this subchapter [scrap tires] in a landfill, including a Type VIII-S tire monofill [if the processor has received payment under Section 361.477 for shredding the tires].

SECTION 13. Section 361.4832, Health and Safety Code, is amended to read as follows:

Sec. 361.4832. ADMINISTRATIVE PENALTY; [AND] ORDER FOR CORRECTIVE ACTION; SUSPENSION OF REGISTRATION. (a) If a person violates this subchapter or a rule adopted or order issued under this subchapter the commission may:

- (1) assess against the person an administrative penalty under Section 361.252; or
- (2) order the person to take a corrective action.

(b) The commission may suspend a registration of or reimbursement payment to a waste tire processor, waste tire transporter, waste tire generator, waste tire recycling facility, or waste tire energy recovery facility on the initiation of an enforcement proceeding and while the

proceeding is pending for the violation of this subchapter or a rule adopted or order issued under this subchapter.

SECTION 14. Section 361.485, Health and Safety Code, is amended to read as follows:

Sec. 361.485. REPORT. (a) Not later than February 1 of each odd-numbered year, the commission shall report to the governor and the legislature on the administration of the program established under this subchapter and its effectiveness in cleaning up existing scrap tire sites and in preventing new scrap tire sites.

(b) The commission shall include in the report the commission's recommendation, based on the commission's evaluation of the rate of inflation during the preceding two years, as to whether an adjustment to the fee assessed on the sale of tires or to the rate of reimbursement paid to a waste tire processor or waste tire energy recovery facility owner or operator is warranted.

SECTION 15. Section 361.486, Health and Safety Code, is amended by amending Subsection (a) and adding Subsection (f) to read as follows:

(a) Notwithstanding Section 361.496, on [On] and after January 1, 1996, each applicant for a [for all] new, amended, and renewal processing registration and each existing [applications, the] processor must identify those persons who will accept the processor's shredded [scrap] tire pieces for recycling or reuse or to use the shredded scrap tires for energy recovery. The commission shall reimburse a processor for only those shredded tires that the commission determines are committed to a legitimate end user.

(f) This section does not apply to a waste tire energy recovery facility owner or operator.

SECTION 16. Subchapter P, Chapter 361, Health and Safety Code, is amended by adding Section 361.4865 to read as follows:

Sec. 361.4865. ASSISTANCE GRANT PROGRAM FOR ENERGY RECOVERY FACILITY RETROFITTING. (a) The commission shall adopt a program and rules to administer grants to registered waste tire energy recovery facility owners or operators to enable a facility to use tire shreds as fuel.

(b) The program may not provide grants that total more than five percent annually of the appropriated funds for that fiscal year.

(c) The commission by rule shall:

(1) identify eligible retrofitting costs; and

(2) provide a process for the determination of eligible retrofitting costs.

(d) Rules adopted under Subsection (c) must include capital investment costs and installation costs as eligible costs.

(e) The commission by rule may provide that a grant to a waste tire energy recovery facility owner or operator may be payable over an extended period not to exceed four years, depending on the amount of the grant.

(f) The commission by rule may require and may provide as a condition of a grant that a person who receives a grant under this section

must use a specified percentage of tires from this state for the facility's tire-derived fuel. A requirement or condition imposed under this subsection must expire not later than September 1, 1999.

(g) A person who receives a grant under this section is not eligible to receive reimbursement under Section 361.4771.

(h) This section expires September 1, 1999.

SECTION 17. Section 361.487, Health and Safety Code, is amended to read as follows:

Sec. 361.487. REIMBURSEMENT RESTRICTIONS. (a) A processor seeking reimbursement under Section 361.477 shall process and store the whole used or scrap tires or [scrap] tire pieces in the state. A waste tire energy recovery facility owner or operator seeking reimbursement under Section 361.4771 shall store and burn the whole used or scrap tires or shredded tire pieces in the state.

(b) The commission shall treat whole used or scrap tires and shredded [scrap] tire pieces generated in Texas, removed from Texas, and subsequently reintroduced to Texas as out-of-state scrap tires for the purposes of this subchapter.

~~[(c) Scrap tires and scrap tire pieces that are shredded and for which a person is reimbursed may not be disposed of in a Type VII-S tire monofill.]~~

SECTION 18. Section 361.492, Health and Safety Code, is amended to read as follows:

Sec. 361.492. ACCEPTANCE OF USED TIRES ON SALE OF TIRES [NEW TIRE WHOLESALERS AND RETAILERS]. (a) A wholesale or retail tire dealer, or a person in the business of selling new or good used tires for use on a vehicle or selling used vehicle parts [person selling new tires] as described in Section 361.472(a) shall accept from customers, without charge, used tires of the type and in a quantity at least equal to the number of [new] tires the customer purchases.

(b) This section does not require a person to accept a used tire from a customer who purchases a new or used vehicle on which the tires purchased are mounted.

SECTION 19. Section 361.493, Health and Safety Code, is amended to read as follows:

Sec. 361.493. CONFIDENTIALITY. Information submitted to the commission in accordance with Section 361.477(g) or Section 361.486(a) or (d), and any report generated by the commission based on the information, is confidential and is not subject to disclosure under Chapter 552, Government Code [424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes)], and the commission shall protect the information accordingly.

SECTION 20. Section 361.495, Health and Safety Code, is amended to read as follows:

Sec. 361.495. FISCAL AUDITS. ~~The [ENSURING CAPACITY. Not later than October 1 of each odd numbered year, the]~~ commission biennially shall perform a fiscal audit of each waste tire processor, waste tire recycling facility, and waste tire energy recovery facility owner or

~~operator to ensure fiscal responsibility and accountability regarding reimbursements made under Sections 361.477, 361.4771 and 361.4772. [determine the total shredding capacity of all registered waste tire processors. If the commission determines that the shredding capacity is less than the previous year's reimbursed waste tire units, the commission may issue registrations to waste tire processors until the anticipated shredding capacity equals the previous year's reimbursed waste tire units. If the commission determines that the shredding capacity exceeds the previous year's reimbursed waste tire units, the commission may not issue a registration to a new waste tire processor until the next capacity assessment is completed].~~

SECTION 21. Subchapter P, Chapter 361, is amended by adding Sections 361.496 and 361.497 to read as follows:

Sec. 361.496. NEW OR EXPANDED PROCESSING OPERATION. A new processor, waste tire energy recovery facility, or waste tire recycler, or a registered processor, waste tire energy recovery facility, or waste tire recycler that seeks to establish a new processing facility or expand a processing operation in the state must:

(1) certify that such processor, waste tire energy recovery facility, or waste tire recycler is willing to provide collection and transportation of waste tires from registered generators in rural counties of the state at the request of the commission during emergency periods as defined by the commission when such generators are not being otherwise served by registered processors or transporters; and

(2) identify and have available for use an end use recycling market in the application for a new or amended registration.

Sec. 361.497. EXPIRATION. This subchapter expires December 31, 1997.

SECTION 22. Section 2, Article 9009b, Revised Statutes, is amended by adding Subsection (c) to read as follows:

(c) A person may not sell, convey, or otherwise transfer to a metals recycling activity a motor vehicle or a motor vehicle that has been junked, flattened, dismantled, or changed so that it has lost its character as a motor vehicle if the motor vehicle includes, contains, or encloses a tire or scrap tire. This subsection does not apply to the sale, conveyance, or transfer of a motor vehicle or a junked, flattened, dismantled, or changed motor vehicle from another state.

SECTION 23. Section 361.4773, Health and Safety Code, is repealed.

SECTION 24. Subchapter P, Chapter 361, is amended by adding Section 361.498 to read as follows:

Sec. 361.498. COMMUNITY SERVICE. Persons seeking reimbursement from the Waste Tire Recycling Fund shall perform community service on an annual basis. Community service includes cooperation with local civic groups to clean up abandoned tire sites that are not classified as Priority Enforcement List sites. The tires collected under this subsection are eligible for reimbursement.

SECTION 25. Notwithstanding the provisions of Section 471.477 and 471.4771, Health and Safety Code, as amended by this Act, should the

74th Legislature, regular session enact **S.B. 776**, and the bill becomes law within the meaning of Section 14, Article IV, Texas Constitution any amounts paid from the Waste Tire Recycling Fund shall be used first to compensate waste tire processors for carryover credits which have accrued prior to September 1, 1995 for waste tires shredded in excess of allocations. This Section expires December 31, 1995.

SECTION 26. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 1995.

(b) The amendment to Section 361.477(g), Health and Safety Code, made by this Act takes effect July 1, 1996.

(c) This Act takes immediate effect.

(2) Renumber the SECTIONS appropriately.

Floor Amendment No. 2

Amend Floor Amendment No. 1 to **C.S.S.B. 776** as follows:

1) On page 4, line 14, between (i) and "to", insert ", and by adding a new subsection (k)".

2) On page 4, strike the "; and" on line 24 and lines 25 through 27.

3) On page 5, between lines 21 and 22, insert the following:

"(k) The fund may not be used to reimburse, nor shall any person apply for reimbursement for, any processing, energy recovery, or recycling activities that use a scrap tire or tire shreds for which reimbursement has been made."

4) On page 7, strike lines 19-20 and substitute the following:

"(g) [Notwithstanding Section 361.486, F] Beginning January 1, 1996, the commission may reimburse a processor for shredded scrap tires only if the processor has a binding agreement to deliver".

5) On page 13, line 22, between "operator" and "whom", insert "or waste tire recycler".

6) On page 15, strike SECTION 16 in its entirety.

7) On page 17, line 17, strike "for use an" and substitute "a certified".

8) On page 17, line 17, strike "recycling market".

9) On page 18, add a new SECTION 24 to read as follows:

"SECTION 24. Section 361.112, Subsection (f), Health and Safety Code, is amended to read as follows:

(f) A person may not store more than 500 used or scrap tires or dispose of any quantity of used or scrap tires unless the tires are shredded, split or quartered as provided by board of health rule. The department may grant an exception to this requirement if the department finds that circumstances warrant the exception. The prohibition provided by this subsection regarding storage does not apply to a registered waste tire energy recovery facility or a waste tire energy recovery facility storage site. The prohibition provided by this subsection does not apply to a person who, for eventual recycling, reuse, or energy recovery, temporarily stores scrap tires in a designated recycling collection area at a landfill permitted by the commission or the department or licensed by a county or by a political subdivision exercising the authority granted by Section 361.165."

10) On page 18, strike SECTION 25 in its entirety and substitute the following:

"SECTION 25. Subchapter P, is amended by adding Section 361.498 to read as follows:

Sec. 361.498. Notwithstanding the provisions of Section 361.477 and 361.4771, any amounts paid from the Waste Tire Recycling Fund shall be used first to compensate waste tire processors for carryover credits which accrued prior to September 1, 1995 for waste tires shredded in excess of allocations. The carryover credits shall be paid as soon as practicable and prior to December 31, 1995. This section expires December 31, 1995."

11) On page 18, strike SECTION 26 in its entirety, and substitute the following:

"SECTION 26. This Act takes immediate effect."

The amendments were read.

Senator Brown moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on S.B. 776 before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Brown, Chair; Ratliff, Sims, Montford, and Cain.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 114 ADOPTED

Senator Rosson called from the President's table the Conference Committee Report on S.B. 114. The Conference Committee Report was filed with the Senate on Friday, May 5, 1995.

On motion of Senator Rosson, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Madla.

SENATE BILL 365 WITH HOUSE AMENDMENTS

Senator Moncrief called S.B. 365 from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Amendment

Amend S.B. 365 by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the continuation and functions of the Texas Historical Commission and to the abolition of the Antiquities Committee and the transfer of the committee's functions to the commission.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 442.002, Government Code, is amended to read as follows:

Sec. 442.002. COMMISSION; MEMBERS; SUNSET ACT. (a) The Texas Historical Commission is an agency of the state.

(b) The commission is composed of 18 members appointed by the governor with the advice and consent of the senate. One member must be a professional archeologist, one must be a professional historian, and one must be a licensed architect who has expertise in historic preservation and architectural history. Fifteen members must be representatives of the general public. A person is not eligible for appointment as a public member of the commission if the person or the person's spouse:

(1) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the commission or receiving funds other than grant funds from the commission; or

(2) uses or receives a substantial amount of tangible goods, services, or funds from the commission, other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses.

(c) Members serve for staggered six-year terms, with the terms of one-third of the members expiring February 1 of each odd-numbered year.

(d) Any vacancy occurring on the commission shall be filled for the unexpired term.

(e) A member of the commission must be a citizen of this state who has demonstrated an interest in the preservation of the state's historical or archeological heritage. In making appointments to the commission, the governor shall:

(1) seek to have each geographical section of the state represented as nearly as possible; and

(2) appoint at least two members from counties with a population of less than 50,000.

(f) A person may not serve as a member of the commission or act as the general counsel to the commission if the person [who] is required to register as a lobbyist under Chapter 305 because[, by virtue] of the person's activities for compensation [in or] on behalf of a profession related to the operation of the commission[, may not serve as a member of the commission or act as the general counsel to the commission].

(g) [It is a ground for removal from the commission that a member violates a prohibition established by Subsection (f) or does not have at the time of appointment or does not maintain during the service on the commission the qualifications required for appointment by Subsection (c).]

~~The validity of an action of the commission is not affected by the fact that the action was taken when a ground for removal of a member of the commission existed.~~

~~[(h)]~~ The commission shall hold at least one regular meeting in each calendar quarter of each year. The commission may hold other meetings at times and places scheduled by it in formal session or called by the chairman of the commission.

~~(h)~~ The governor shall designate a member of the commission as the presiding officer of the commission to serve in that capacity at the pleasure of the governor. ~~[(+)]~~ At its first meeting in each odd-numbered year, the commission shall select from its membership an assistant presiding officer ~~[a chairman, vice-chairman,]~~ and a secretary.

~~(i) [(+)]~~ A member of the commission serves without pay but shall be reimbursed for actual expenses incurred in attending a meeting of the commission.

~~(j) [(k)]~~ The commission is subject to the open meetings law, Chapter 551, and the administrative procedure law, Chapter 2001 [271; Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes)]. The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to ~~[At an open meeting of the commission, a member of the public is entitled to appear and]~~ speak on any issue under the jurisdiction of the commission[; within the limits of any reasonable rules of the commission designed to expedite consideration of issues at a meeting].

~~(k) [(+)]~~ The Texas Historical Commission is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter expires September 1, 2007 [1995].

(l) Appointments to the commission shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

SECTION 2. Chapter 442, Government Code, is amended by adding Sections 442.0021, 442.0022, and 442.0023 to read as follows:

Sec. 442.0021. COMMISSION MEMBERS: TRAINING. (a) Before a member of the commission may assume the member's duties and before the member may be confirmed by the senate, the member must complete at least one course of the training program established under this section.

(b) A training program established under this section shall provide information to the member regarding:

- (1) the enabling legislation that created the commission;
- (2) the programs operated by the commission;
- (3) the role and functions of the commission;
- (4) the rules of the commission with an emphasis on the rules that relate to disciplinary and investigatory authority;
- (5) the current budget for the commission;

- (6) the results of the most recent formal audit of the commission;
- (7) the requirements of the:
 - (A) open meetings law, Chapter 551;
 - (B) open records law, Chapter 552; and
 - (C) administrative procedure law, Chapter 2001;
- (8) the requirements of the conflict of interest laws and other laws relating to public officials; and
- (9) any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

Sec. 442.0022. COMMISSION MEMBERS: CONFLICT OF INTEREST. (a) An officer, employee, or paid consultant of a Texas trade association in the field of archeology or historic preservation may not be a member of the commission or employee of the commission who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(b) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of archeology or historic preservation may not be a member of the commission and may not be an employee of the commission who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(c) For the purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

Sec. 442.0023. COMMISSION MEMBERS: GROUNDS FOR REMOVAL. (a) It is a ground for removal from the commission if a member:

(1) does not have at the time of appointment the qualifications required by Sections 442.002(b) and (e);

(2) does not maintain during service on the commission the qualifications required by Sections 442.002(b) and (e);

(3) violates a prohibition established by Sections 442.002(f) or 442.0022;

(4) cannot because of illness or disability discharge the member's duties for a substantial part of the term for which the member is appointed; or

(5) is absent from more than half of the regularly scheduled commission meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the commission.

(b) The validity of an action of the commission is not affected by the fact that it is taken when a ground for removal of a commission member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the commission of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest officer of the commission, who shall notify the governor and the attorney general that a potential ground for removal exists.

SECTION 3. Section 442.003, Government Code, is amended to read as follows:

Sec. 442.003. PURPOSE OF COMMISSION. The commission shall provide leadership and coordinate services in the field of archeological and historic preservation.

SECTION 4. Section 442.004, Government Code, is amended to read as follows:

Sec. 442.004. PERSONNEL. (a) The commission shall employ an executive director.

(b) A person employed as executive director must:

- (1) be a citizen of this state;
- (2) have ability in organization, administration, and coordination of organizational work; and
- (3) have particular qualities for carrying out the purposes of the commission.

(c) The executive director may employ professional and clerical personnel as considered necessary. The number of employees, their compensation, and other expenditures shall be in accordance with appropriations to the commission by the legislature.

(d) The executive director or the executive director's designee shall provide to members of the commission and to agency employees, as [As] often as necessary, information regarding their qualification for office or employment under this chapter and their [the commission shall provide to its members and staff information regarding their] responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(e) The executive director or the executive director's designee shall develop an intra-agency [a] career ladder program that addresses opportunities for mobility and advancement for employees within the commission. The program shall require intra-agency posting of all positions concurrently with any public posting [within the agency. The program must require that openings in all positions except entry level positions be posted within the commission for at least 10 days before they are posted for the public].

(f) The executive director or the executive director's designee shall develop a system of annual performance evaluations based on documented employee performance [measurable job tasks]. All [Any] merit pay for commission employees must be based on the system established under this subsection [that system].

(g) The executive director ~~or the executive director's designee~~ shall prepare and maintain a written policy statement ~~[plan]~~ to assure implementation of a program of equal employment opportunity under which all [any] personnel transactions are ~~[transaction-is]~~ made without regard to race, color, disability, sex, religion, age, or national origin. ~~[The plan must cover an annual period and be updated at least annually.]~~ The policy statement ~~[plan]~~ must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel, that are in compliance with the requirements of Chapter 21, Labor Code;

(2) a comprehensive analysis of the commission workforce that meets federal and state guidelines;

(3) procedures by which a determination can be made about the extent of underuse in the commission workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of underuse ~~[a comprehensive analysis of the commission's employees by race, sex, ethnic origin, class of position, and salary or wage;~~

~~[(2) plans for recruitment, evaluation, selection, appointment, training, promotion, and other personnel policies;~~

~~[(3) steps reasonably designed to overcome any identified underuse of minorities and women in the commission's work force; and~~

~~[(4) objectives and goals, timetables for the achievement of the objectives and goals, and assignments of responsibility for the achievement of the objectives and goals].~~

(h) A policy statement prepared under Subsection (g) must cover an annual period, be updated annually, be reviewed by the Commission on Human Rights for compliance with Subsection (g), and be filed with the governor's office.

(i) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (h). The report may be made separately or as a part of other biennial reports made to the legislature.

(j) Before the expiration of 30 days after April 1 and November 1 of each year the commission shall submit a progress report to the governor. The report must include a statement of the steps that the commission has taken during the previous six months to comply with the requirement of Subsection (g).

(k) ~~[(+)]~~ The governor shall designate the executive director as the state historic preservation ~~[liaison]~~ officer, and the executive director shall act in that capacity for the conduct of relations with the representatives of the federal government and the respective states concerning matters of historic preservation.

(l) The commission shall develop and implement policies that clearly separate the policymaking responsibilities of the commission and the management responsibilities of the executive director and the staff of the commission.

SECTION 5. Section 442.005, Government Code, is amended by amending Subsections (a), (b), (c), (d), and (j) and by adding Subsection (r) to read as follows:

(a) The commission shall furnish leadership, coordination, and services to county historical commissions, historical societies, and the organizations, agencies, institutions, museums, and individuals of this state interested in the preservation of archeological or historical heritage and shall act as a clearinghouse and information center for that work in this state.

(b) The commission is responsible for the administration of the Antiquities Code of Texas, Chapter 191, Natural Resources Code, and shall strive to establish effective working relationships among individuals primarily interested in history, architecture, and archeology.

(c) The commission shall furnish professional consultant services to museums and to agencies, individuals, and organizations interested in the preservation and restoration of archeological or historic structures, sites, or landmarks.

~~[(c) On receiving notification from a state agency that the agency is proposing construction of a new state building in an area, the commission shall compile a list of historic structures that are suitable and available for state purchase in the area. The list must include the name and address of the owner of each structure if that information is available to the commission. The commission shall furnish the list to the state agency proposing the construction not later than the 45th day after the date on which it receives notice from the agency.]~~

(d) The commission shall compile and furnish to the State Purchasing and General Services Commission a list of the names and addresses of ~~[owners of historic structures that are suitable and available for lease by the state and a list of the names and addresses of]~~ individuals and organizations that are interested in the preservation of historic structures. The ~~list~~ lists shall be updated at least once each year.

(j) The commission shall use its facilities and leadership to stimulate the development and protection of archeological or historical resources in every locality of this state, emphasizing responsibility and privilege of local effort except in a case in which the project or problem clearly demands a broader approach.

(r) The commission may establish advisory committees to advise the commission on archeological and historical matters, including an advisory committee to consider matters relating to Chapter 191, Natural Resources Code.

SECTION 6. Chapter 442, Government Code, is amended by adding Section 442.0085 to read as follows:

Sec. 442.0085. STATE REGISTER OF HISTORIC PLACES. (a) The commission shall develop and maintain a state register of historic places using existing statutory classifications of those places, including Recorded Texas Historic Landmarks, National Register listings, subject markers, and state archeological landmarks.

(b) The commission shall adopt rules to implement this section.

SECTION 7. Section 442.009, Government Code, is amended to read as follows:

Sec. 442.009. CONSUMER INFORMATION AND COMPLAINTS. (a) The commission shall prepare information of public [consumer] interest describing the functions of the commission and the [describing the commission's] procedures by which complaints are filed with and resolved by the commission. The commission shall make the information available to the [general] public and appropriate state agencies.

(b) The commission by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the commission for the purpose of directing complaints to the commission.

(c) The commission shall keep [an] information [file] about each complaint filed with the commission. The information shall include:

- (1) the date the complaint is received;
- (2) the name of the complainant;
- (3) the subject matter of the complaint;
- (4) a record of all persons contacted in relation to the complaint;
- (5) a summary of the results of the review or investigation of the

complaint; and

(6) for complaints for which the agency took no action, an explanation of the reason the complaint was closed without action.

(d) The commission shall keep a file about each written complaint filed with the commission that the agency has authority to resolve. The commission shall provide to the person filing the complaint and the persons or entities complained about the commission's policies and procedures pertaining to complaint investigation and resolution. The commission, [(e) If a written complaint is filed with the commission, the commission shall notify the parties to the complaint of the status of the complaint] at least quarterly and until final disposition of the complaint, shall notify the person filing the complaint and the persons or entities complained about of the status of the complaint unless the notice would jeopardize an undercover investigation.

SECTION 8. Chapter 442, Government Code, is amended by adding Section 442.0095 to read as follows:

Sec. 442.0095. PROGRAM AND FACILITY ACCESSIBILITY. The commission shall comply with federal and state laws related to program and facility accessibility. The executive director shall also prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the commission's programs and services.

SECTION 9. Section 442.010, Government Code, is amended to read as follows:

Sec. 442.010. AUDITS; ANNUAL REPORT. (a) The financial transactions of the commission are subject to audit by the state auditor in accordance with Chapter 321[, Government Code].

(b) The commission shall prepare annually a complete and detailed written report accounting for all funds received and disbursed by the

commission during the preceding fiscal year. The annual report must meet the reporting requirements applicable to financial reporting provided in the General Appropriations Act.

SECTION 10. Section 442.015, Government Code, is amended by amending the section heading and Subsections (a), (b), and (g) to read as follows:

Sec. 442.015. TEXAS PRESERVATION TRUST FUND ACCOUNT.

(a) Notwithstanding Sections 403.094 and 403.095, the [The] Texas preservation trust fund account is a separate account in the general revenue fund [in the state treasury]. The account [fund] consists of transfers made to the account [fund], loan repayments, grants and donations made for the purposes of this program, proceeds of sales, income earned on money in the account [fund], and any other money received under this section. Money in the account [fund] may be used only for the purposes of this section and may not be used to pay operating expenses of the commission. Money allocated to the commission's historic preservation grant program shall be deposited to the credit of the account [fund]. Income earned on money in the account [fund] shall be deposited to the credit of the account [fund].

(b) The commission may use money in the Texas preservation trust fund account to provide financial assistance to public or private entities for the acquisition, restoration, or preservation of historic property in the state that is listed in the National Register of Historic Places or Recorded Texas Historic Landmarks or that the commission determines is eligible for such a listing. The financial assistance may be in the amount and form and according to the terms that the commission by rule determines. The commission shall give priority to property the commission determines to be endangered by demolition, neglect, underuse, or other threat to the property. Money deposited to the credit of the account [fund] specifically for architectural projects or for archeological projects may be used only for the type of projects specified. If such a specification is not made, 90 percent of the money shall be used for historic architectural projects and 10 percent shall be used for prehistoric and historic archeological projects.

(g) The commission may accept grants or other donations of money or other property and services from any source. Money received under this subsection shall be deposited to the credit of the Texas preservation trust fund account.

SECTION 11. Chapter 442, Government Code, is amended by adding Section 442.0155 to read as follows:

Sec. 442.0155. FUNDS SUBJECT TO STATE FUNDS REFORM ACT. All money paid to the commission under this chapter is subject to Subchapter F, Chapter 404.

SECTION 12. Subsection (e), Section 442.016, Government Code, is amended to read as follows:

(e) Damages recovered under this section shall be deposited in the Texas preservation trust fund account.

SECTION 13. Subsection (a), Section 443.008, Government Code, is amended to read as follows:

(a) The board shall appoint a permanent advisory committee consisting of the executive director of the Texas Historical Commission, ~~[chairman of the Antiquities Committee,]~~ director of the Texas State Library and Archives Commission, director of the Texas Commission on the Arts, and three citizens, one each appointed by the governor, lieutenant governor, and speaker of the house of representatives. At its first meeting in each odd-numbered year, the board shall designate a chairman for the committee from among the committee's members. The person designated serves in that capacity until a successor is designated.

SECTION 14. The heading of Section 31.160, Natural Resources Code, is amended to read as follows:

Sec. 31.160. INFORMATION FOR TEXAS HISTORICAL COMMISSION ~~[ANTIQUITIES COMMITTEE]~~.

SECTION 15. Subsection (c), Section 31.160, Natural Resources Code, is amended to read as follows:

(c) The division shall give the information and the photographs to the Texas Historical Commission ~~[Antiquities Committee]~~.

SECTION 16. The heading of Chapter 191, Natural Resources Code, is amended to read as follows:

CHAPTER 191. ANTIQUITIES CODE ~~[COMMITTEE]~~

SECTION 17. Subdivision (1), Section 191.003, Natural Resources Code, is amended to read as follows:

(1) "Committee" means the Texas Historical Commission ~~[Antiquities Committee]~~.

SECTION 18. Subchapter C, Chapter 191, Natural Resources Code, is amended by adding Section 191.0525 to read as follows:

Sec. 191.0525. NOTICE REQUIRED. (a) Before breaking ground at a project location on state or local public land, the person primarily responsible for the project or the person's agent shall notify the committee. The committee shall promptly determine whether:

(1) a historically significant archeological site is likely to be present at the project location;

(2) additional action, if any, is needed to protect the site; and

(3) an archeological survey is necessary.

(b) Except as provided by Subsection (c), the committee shall make a determination not later than the 30th day after the date the committee receives notice under Subsection (a). If the committee fails to respond in the 30-day period, the person may proceed with the project without further notice to the committee. If the committee determines that an archeological survey is necessary at the project location, the project may not commence until the archeological survey is completed.

(c) The committee shall make a determination not later than the 15th day after the date the committee receives notice under Subsection (a) for project locations regarding oil, gas, or other mineral exploration, production, processing, marketing, refining, or transportation facility or pipeline projects. If the committee fails to respond in the 15-day period,

the person may proceed with the project without further notice to the committee. If the committee determines that an archeological survey is necessary at the project location, the project may not commence until the archeological survey is completed.

(d) A project for a county or municipality requires advance project review only if the project affects a cumulative area larger than five acres or disturbs a cumulative area of more than 5,000 cubic yards, whichever measure is triggered first, or if the project is inside a designated historic district or recorded archeological site.

(e) There exist categorical exclusions since many activities conducted on nonfederal public land have little, if any, chance to damage archeological sites, and therefore should not require notification under this section. The following are categorical exclusions at a minimum:

- (1) water injection into existing oil and gas wells;
- (2) upgrading of electrical transmission lines when there will be no new disturbance of the existing easement;
- (3) seismic exploration activity when there is no ground penetration or disturbance;
- (4) building and repairing fences that do not require construction or modification of associated roads, fire breaks, or previously disturbed ground;
- (5) road maintenance that does not involve widening or lengthening the road;
- (6) installation or replacement of meter taps;
- (7) controlled burning of fields;
- (8) animal grazing;
- (9) plowing, if the techniques are similar to those used previously;
- (10) installation of monuments and sign posts unless within the boundaries of designated historic districts;
- (11) maintenance of existing trails;
- (12) land sales and trades of land held by the permanent school fund and permanent university fund;
- (13) permanent school fund and permanent university fund leases, easements, and permits, including mineral leases and pooling agreements, in which the lessee, grantee, or permittee is specifically required to comply with the provisions of this chapter;
- (14) oil, gas, or other mineral exploration, production, processing, marketing, refining, or transportation facility or pipeline project in an area where the project will cross state or local public roads, rivers, and streams, unless they contain a recorded archeological site or a designated state land tract in Texas' submerged lands;
- (15) maintenance, operation, replacement, or minor modification of an existing oil, gas, or other mineral exploration, production, processing, marketing, refining, or transportation facility or pipeline; and
- (16) any project for which a state permit application has been made prior to promulgation of rules under this section.

(f) This section does not apply to any state agency or political subdivision that has entered into a memorandum of understanding for coordination with the committee.

(g)(1) If, during the course of a project or class of projects that have complied with the notification requirements of this section, a person encounters an archeological site, the person shall abate activity on the project at the project location and shall promptly notify the committee. Within two business days of notification under this subsection, the committee shall determine whether:

(A) a historically significant archeological site is likely to be present in the project area;

(B) additional action, if any, is needed to protect the site; and

(C) an archeological investigation is necessary.

(2) If the committee fails to respond within two business days, the person may proceed without further notice to the committee.

(h) The notification required by this section does not apply to a response to a fire, spill, or other emergency associated with an existing facility located on state or local public lands if the emergency requires an immediate response.

(i) The committee by rule shall establish procedures to implement this section.

SECTION 19. Section 11.24, Tax Code, is amended to read as follows:

Sec. 11.24. HISTORIC SITES. The governing body of a taxing unit by official action of the body adopted in the manner required by law for official actions may exempt from taxation part or all of the assessed value of a structure or archeological site and the land necessary for access to and use of the structure or archeological site, if the structure or archeological site is:

(1) designated as a Recorded Texas Historic [Historical] Landmark under Chapter 442, Government Code, or a state archeological landmark under Chapter 191, Natural Resources Code, by the Texas Historical Commission [~~and by the governing body of the taxing unit~~]; or

(2) designated as a historically or archeologically significant site in need of tax relief to encourage its preservation pursuant to an ordinance or other law adopted by the governing body of the unit.

SECTION 20. Subsection (k), Section 315.006, Local Government Code, is amended to read as follows:

(k) If the Texas Historical Commission makes a determination under Subsection (j)(2), the commission may enforce this section, and the municipality may not act under this section. Damages recovered under this subsection shall be deposited in the Texas preservation trust fund account.

SECTION 21. Section 5.01A, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5.01A. (a) In acquiring real property, each using agency of the state, other than those specifically excluded by Sections 5.13 and 5.14 of this article, shall give first consideration to a building that is designated as a historic structure under Section 442.001, Government Code, or to a building that has been designated a landmark by the local governing authority, if the building meets requirements and specifications and the cost

is not substantially higher than other available structures that meet requirements and specifications.

~~(b) [Upon consideration of the construction of a new state building, the using agency shall notify the Texas Historical Commission and shall request a list of historic structures in the proposed construction area that are suitable and available for state acquisition.~~

~~[(c) If the using agency decides to proceed with new construction, the using agency shall forward to the commission for inclusion in the project analysis for the new construction:~~

~~[(1) the date it notified the Texas Historical Commission of the proposed construction;~~

~~[(2) the date of the Texas Historical Commission's response;~~

~~[(3) a copy of the list of historic structures furnished by the Texas Historical Commission; and~~

~~[(4) a statement of the reasons for the rejection of each of the historic structures on the list.~~

~~[(d)]~~ If the using agency rejects the acquisition of a historic structure because of the cost of the structure, the using agency shall forward to the commission for inclusion in the project analysis for the new construction or acquisition a comparison of the cost of the new construction or acquisition with the cost of the purchase and rehabilitation of the historic structure.

~~(c) [(e)]~~ In determining the feasibility of the acquisition of a historic structure, the using agency shall evaluate the possibility of providing the space needed by the using agency by combining new construction with the acquisition of the historic structure.

~~(d) [(f)]~~ Upon request of the using agency, the commission shall assist the using agency in evaluating the feasibility of acquiring a historic structure and in preparing the information required by Subsection (b) [Subsections (c) and (d)] of this section.

~~(e) [(g)]~~ The commission shall fulfill the requirements of Subsections (a) through ~~(c) [(e)]~~ of this section for all projects for which it is the using agency and for any multiagency state office building for which the commission serves as the coordinating authority.

SECTION 22. Subsection (j), Section 6.05, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(j) In leasing space for the use of state agencies, the commission shall give first consideration to a building that is designated as a historic structure under Section 442.001, Government Code, or to a building that has been designated a landmark by the local governing authority, if the building meets requirements and specifications and the cost is not substantially higher than other available structures that meet requirements and specifications. Upon consideration of the leasing of space for the use of a state agency, the commission shall notify all individuals and organizations that are within the county where the leasing is under consideration and that are on a list furnished to the commission by the Texas Historical Commission as required by Section 442.005, Government

Code. At the end of a biennium, the commission shall report to the legislature the commission's reasons for rejecting during the biennium the lease of any historic structure whose owner bid to lease space to the state.

SECTION 23. The Texas Historical Commission shall report to the 75th Legislature not later than February 1, 1997, regarding the state register of historic places required by Section 442.0085, Government Code, as added by this Act. The initial report must include recommendations for statutory changes to implement the state register, ensure uniform and adequate protection for historic properties, and eliminate duplication to the extent possible.

SECTION 24. (a) As the terms of the members of the Texas Historical Commission expire, or as a vacancy occurs on the commission, the governor shall appoint members to the commission to achieve, as soon as possible, the membership plan prescribed for the commission by Subsections (b) and (e), Section 442.002, Government Code, as amended by this Act.

(b) The changes in law to Subsections (b) and (e), Section 442.002, Government Code, and the additions to law of Sections 442.0021 and 442.0022, Government Code, made by this Act apply only to a member of the Texas Historical Commission who is appointed to the commission on or after the effective date of this Act.

SECTION 25. (a) The Antiquities Committee is abolished and its powers and duties are transferred, as provided by this Act, to the Texas Historical Commission. A reference in law to the Antiquities Committee means the Texas Historical Commission.

(b) The Texas Historical Commission assumes the position of the Antiquities Committee as to the obligations, agreements, and contracts of the committee.

(c) The records, other property, and unobligated and unexpended appropriations of the Antiquities Committee become the records, property, and appropriations of the Texas Historical Commission. The personnel of the committee continue as employees of the commission.

(d) A rule adopted by the Antiquities Committee that is in effect immediately before September 1, 1995, becomes a rule of the Texas Historical Commission and remains in effect until amended or repealed by the commission.

SECTION 26. The sections of Subchapter B, Chapter 191, Natural Resources Code, are repealed, except for Subsections (b), (c), and (d), Section 191.021.

SECTION 27. This Act takes effect August 30, 1995.

SECTION 28. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 1

Amend C.S.S.B. 365 as follows:

(1) On page 10, strike line 17 and substitute "Subsections (r) and (s) to read as follows:".

(2) On page 12, between lines 3 and 4, insert the following:

(s) The commission may promote the appreciation of historic sites, structures, or objects in the state through a program designed to develop tourism in the state.

Floor Amendment No. 2

Amend C.S.S.B. 365 by adding an appropriately numbered section to read as follows:

SECTION _____. (a) The Texas Historical Commission and the Parks and Wildlife commission shall conduct a joint study of the possible transfer of management and control of various historical sites currently under the management and control of the Texas Parks and Wildlife Department.

(b) The study must consider, as to each site, the benefits and detriments of the transfer, must include professional assessments by staff and any consultants as well as assessments by the general public and the communities surrounding the applicable site, and must consider funding sources alternative to the sources currently dedicated by state law to the acquisition, operation, and maintenance of state parks. If the two agencies agree that the transfer of one or more sites is to be recommended, the respective commissions shall develop a schedule for the orderly transfer of the sites, with the final transfer occurring not later than September 1, 2001.

(c) The Texas Historical Commission and the Parks and Wildlife Commission shall report the results of the study and their recommendations, including any proposed transfer schedule, to the 75th Legislature not later than February 1, 1997.

Floor Amendment No. 3

Amend C.S.S.B. 365 by inserting the following section to the bill, appropriately numbered, and renumbering the remaining sections of the bill appropriately:

SECTION _____. Chapter 442, Government Code, is amended by adding Section 442.0085 to read as follows:

Sec. 442.0085. MILITARY SITES PROGRAM. (a) The commission shall identify sites in and outside this state that are historically significant to this state because of:

(1) military action or service at the sites; or

(2) other significant events of a military nature at the sites that shaped the history of this state.

(b) In carrying out its duties under Subsection (a), the commission shall assist other governmental entities, including other states, institutions, organizations, and other entities in identifying military sites outside this state where Texans served with distinction.

(c) The commission may designate or encourage the designation of sites identified under Subsections (a) and (b) through existing history programs, including:

(1) local community landmark programs;

(2) the state historical marker program under Section 442.006;

- (3) the National Register of Historic Places;
- (4) the National Historic Landmarks program;
- (5) the World Heritage List; and
- (6) other appropriate programs.

(d) The commission may provide information regarding the significance of the sites designated under this section using:

- (1) historical markers and monuments;
- (2) publications and films; and
- (3) other appropriate media.

(e) The commission may seek assistance from other state and local governmental entities in carrying out the commission's duties under this section.

(f) The commission may seek and accept gifts, grants, and donations from public or private sources, including seeking available federal funds, to accomplish the purposes of this section.

Floor Amendment No. 4

Amend C.S.S.B. 365 by adding an appropriately numbered section to the bill to read as follows and renumbering the remaining sections of the bill appropriately:

SECTION ____ . Section 191.092, Natural Resources Code, is amended by adding new Subsections (c), (d), and (e) and relettering existing Subsections (c), (d), and (e) to read as follows:

(c) An individual or a private group that desires to nominate a building or site owned by a political subdivision as a state archeological landmark must give notice of the nomination at the individual's or group's own expense in a newspaper of general circulation published in the city, town, or county in which the building or site is located. If no newspaper of general circulation is published in the city, town, or county, the notice must be published in a newspaper of general circulation published in an adjoining or neighboring county that is circulated in the county of the applicant's residence. The notice must:

- (1) be printed in 12-point boldfaced type;
- (2) include the exact location of the building or site; and
- (3) include the name of the group or individual nominating the building or site.

(d) An original copy of the notice and an affidavit of publication signed by the newspaper's publisher must be submitted to the commission with the application for nomination.

(e) The commission may not consider for designation as a state archeological landmark a building or site owned by a political subdivision unless the notice and affidavit required by Subsection (d) are attached to the application.

(f) Before the committee may designate a structure or building as a state archeological landmark, the structure or building must be listed on the National Register of Historic Places.

(g) [(d)] The committee shall adopt rules establishing criteria for the designation of a structure or building as a state archeological landmark.

(h) ~~(e)~~ The committee shall consider any and all fiscal impact on local political subdivisions before any structure or building owned by a local political subdivision may be designated as a state archeological landmark.

The amendments were read.

On motion of Senator Moncrief and by unanimous consent, the Senate concurred in the House amendments to S.B. 365 by a viva voce vote.

SENATE BILL 1196 WITH HOUSE AMENDMENTS

Senator Lucio, on behalf of Senator Sims, called S.B. 1196 from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Floor Amendment No. 1

Amend S.B. 1196 by adding the following appropriately numbered sections to the bill and renumbering existing sections of the bill appropriately:

SECTION ____ . Section 75.012, Agriculture Code, is amended by amending Subsection (b) and adding Subsection (d) to read as follows:

(b) If a regulated herbicide is applied by a commercial applicator, the person in control of the crop or land to which the regulated herbicide is applied and the commercial applicator jointly are responsible for ensuring that the application is in compliance with this chapter and the rules adopted by the department, except as provided by Subsection (d).

(d) The person in control of the crop or land to which the regulated herbicide is applied is not responsible for damages resulting from the application or for ensuring that the application is in compliance with this chapter and the rules adopted by the department if:

(1) the regulated herbicide is applied under a local, state, or federal government program that requires the application of a regulated herbicide to the crop or land; and

(2) the person in control of the crop or land to which the regulated herbicide is applied does not control or have a right to control the time and manner of the application of the regulated herbicide to the crop or land.

SECTION ____ . Subchapter H, Chapter 76, Agriculture Code, is amended by adding Section 76.185 to read as follows:

Sec. 76.185. DAMAGES RESULTING FROM APPLICATION OF PESTICIDE UNDER GOVERNMENT PROGRAM. Notwithstanding other law, the owner or lessee of land on which a pesticide is applied is not responsible for damages resulting from the application of the pesticide or subject to a criminal or civil penalty in connection with the application of the pesticide if:

(1) the pesticide is applied under a local, state, or federal government program that requires the application of the pesticide to the land; and

(2) the owner or lessee of the land on which the pesticide is applied does not control or have a right to control the time and manner of the application of the pesticide to the land.

Floor Amendment No. 2

Amend S.B. 1196 as follows:

Adding a new SECTION 1 and renumbering remaining sections of the bill. Section 74.101, Agriculture Code is amended by amending Subdivision (3)(c) to read as follows:

(3)(c) The creation and use of a boll weevil eradication foundation as a vehicle to provide for assessments and governing boards and to establish eradication zones in order to suppress and eradicate boll weevils and other cotton pests are consistent with the goals and uses of revenue established under Article XVI, Section 68, of the Texas Constitution.

~~[SECTION 1]~~ SECTION 2. Section 74.102, Agriculture Code is amended by amending Subdivisions (6), (7), (10), (11), and (13), and adding (15) to read as follows:

(6) "Eradication" means elimination of boll weevils or pink bollworms to the extent that the commissioner does not consider further elimination of boll weevils or pink bollworms necessary to prevent economic loss to cotton growers.

(7) "Eradication zone" means a geographic area in which cotton growers by referendum approve their participation in a boll weevil or pink bollworm eradication program.

(10) "Host" means a plant or plant product in which the boll weevil or pink bollworm is capable of completing any portion of its life cycle.

(11) "Infested" means the present of the boll weevil or pink bollworm in any life stage or the existence of generally accepted entomological evidence from which it may be concluded with reasonable certainty that the boll weevil or pink bollworm is present.

(13) "Regulated article" means an article carrying or capable of carrying the boll weevil or pink bollworm including cotton plants, seed cotton, gin trash, other hosts or mechanical cotton harvesters.

(15) "The Pink Bollworm Eradication Zone" includes Reeves and Pecos counties.

SECTION 3. Section 74.105, Agriculture Code is amended by amending Subdivision (a), (c)(1) and (c)(4) to read as follows:

(a) The organization certified under Section 74.104 of this code or the foundation shall conduct a referendum in each proposed eradication zone to determine whether cotton growers desire to establish an official boll weevil or pink bollworm eradication zone.

(c)(1) a statement of the purpose of the boll weevil or pink bollworm eradication program;

(c)(4) an address and toll-free telephone number that a cotton grower may use to request more information about the referendum or the boll weevil or pink bollworm eradication program.

~~[SECTION 2.]~~ SECTION 4.

~~[SECTION 3.]~~ SECTION 5.

~~[SECTION 4.]~~ SECTION 6.

~~[SECTION 5.]~~ SECTION 7.

SECTION 8. Section 74.112, Agriculture Code is amended by amending Subdivision (a) and (b) to read as follows:

(a) On the determination by the foundation that the boll weevil eradication program has been completed in all eradication zones established under the subchapter for boll weevil control, and the pink bollworm eradication program has been completed in any eradication zone established under this chapter for pink bollworm control, the foundation shall provide notice of such completion to the commissioner along with a request for discontinuance of the eradication program and collection of the assessment. Any such request shall include documentation supporting the eradication of the boll weevil in all eradication zones established for boll weevil eradication or pink bollworm in any eradication zone established for pink bollworm eradication and a plan for discontinuance of the program and assessment.

(b) The commissioner shall determine whether or not the further elimination of the boll weevil or pink bollworm is necessary in the eradication zones and approve or disapprove discontinuance of the foundation and the plan for dissolution.

SECTION 9. Section 74.114, Agriculture Code is amended by amending Subdivision (i) to read as follows:

(i) A public hearing regarding the proposed eradication plan, including regulations to be promulgated by the commissioner, shall be held in each of several locations within each boll weevil or pink bollworm eradication zone. The area posted for each hearing shall include no more than six contiguous counties.

SECTION 10. Section 74.115, Agriculture Code is amended by amending Subsection (b) to read as follows:

(b) A cotton grower who fails to pay all assessments and penalties before the 10th ~~[31st]~~ day after receiving notice of the delinquency shall destroy any cotton growing on the grower's acreage that is subject to the assessment. Cotton plants that are not destroyed are a public nuisance, and, on recommendation of the foundation, the department shall follow the procedures for destruction of host plants provided by Subchapter A and Subchapter B of this chapter, including procedures for reimbursement by the grower of costs required for destruction. The department may apply to a district court with jurisdiction in the county in which the public nuisance is located to have the nuisance condemned and destroyed. Injunctive relief available to the department under this subchapter is in addition to any other legal remedy available to the department. The department is not required to file a bond in a proceeding under this subsection.

~~[SECTION 9.]~~ SECTION 11.

SECTION 12. Section 74.117, Agriculture Code is amended to read as follows:

The department, the foundation, or a designated representative of either entity may enter cotton fields or other premises to carry out the purposes of this subchapter, ~~[and] Subchapter A, and Subchapter B~~ of this chapter, which include the treatment, monitoring, and destruction of growing cotton or other host plants. The department, the foundation, or a designated representative of either entity may inspect fields or premises in this state of the purpose of determining whether the property is infested with the boll weevil or the pink bollworm. An inspection must be conducted during reasonable daylight hours.

SECTION 13. Section 74.118, Agriculture Code is amended by amending Subdivision (b) to read as follows:

(b) The commissioner may adopt rules prohibiting the planting of noncommercial cotton in eradication zones and requiring that all growers of commercial cotton in an eradication zone participate in a boll weevil or pink bollworm eradication program that includes cost sharing as required by the rules.

SECTION 14. Section 74.120, Agriculture Code is amended by amending Subdivisions (a), (b)(1), (b)(4), and (c) to read as follows:

(a) The commissioner shall adopt rules to protect individuals, livestock, wildlife, and honey bee colonies on any premises in an eradication zone on which cotton plants are being grown that have been or are being treated to eradicate the boll weevil or pink bollworm.

(b)(1) establish a methodology for determining when boll weevil or pink bollworm population levels have reached economic significance;

(b)(4) establish methods for monitoring boll weevils, pink bollworms, and secondary pests;

(c) The foundation may adopt other reasonable rules it considers necessary to carry out the purposes of the subchapter, ~~[and] Subchapter A, and Subchapter B~~ of this chapter. All rules issued under this subchapter must be adopted and published in accordance with state requirements. Rules adopted by the foundation under this section shall be consistent with rules adopted by the commissioner under this subchapter.

SECTION 15. Section 74.122, Agriculture Code is amended to read as follows:

The department may adopt rules relating to quarantining areas of this state that are infested with the boll weevil or the pink bollworm. The rules must address the storage of regulated articles and the movement of regulated articles into and out of a quarantined area. The department may also adopt rules governing the movement of regulated articles from other states into this state if the articles are known to be infested with the boll weevil or the pink bollworm.

SECTION 16. Section 74.123, Agriculture Code is amended by amending Subdivision (1) to read as follows:

(1) a certificate that indicates that the article is not infested with the boll weevil or the pink bollworm.

SECTION 17. Section 74.124, Agriculture Code is amended by amending Subdivision (a) to read as follows:

(a) The foundation may carry out programs to destroy and eliminate the boll weevil and the pink bollworm in this state by cooperating through written agreements with:

SECTION 18. Section 74.125, Agriculture Code is amended by amending Subdivision (a)(3) to read as follows:

(3) in all events maintain the effectiveness of the boll weevil or pink bollworm eradication program administered under this subchapter.

~~[SECTION 12.]~~ SECTION 19.

~~[SECTION 13.]~~ SECTION 20.

~~[SECTION 14.]~~ SECTION 21.

~~[SECTION 15.]~~ SECTION 22.

The amendments were read.

On motion of Senator Lucio, on behalf of Senator Sims, and by unanimous consent, the Senate concurred in the House amendments to S.B. 1196 by a viva voce vote.

MESSAGE FROM THE GOVERNOR

The following Message from the Governor was read and was filed with the Secretary of the Senate:

Austin, Texas

May 5, 1995

TO THE SENATE OF THE SEVENTY-FOURTH LEGISLATURE,
REGULAR SESSION:

In accordance with the provisions of S.C.R. 141, I herewith return S.B. 550 to the Senate for further consideration.

George W. Bush

Governor of Texas

MESSAGE FROM THE GOVERNOR

The following Message from the Governor was read and was referred to the Committee on Nominations:

Austin, Texas

May 8, 1995

TO THE SENATE OF THE SEVENTY-FOURTH LEGISLATURE,
REGULAR SESSION:

On May 5, 1995, I submitted the name of April L. Eyeington of College Station for appointment to the Texas State Board of Public Accountancy for a term to expire January 31, 2001.

I hereby withdraw her nomination for this board and request that the Senate return this appointment to me.

Respectfully submitted,

/s/George W. Bush

Governor of Texas

SENATE BILL 31 WITH HOUSE AMENDMENTS

Senator Lucio called **S.B. 31** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Floor Amendment No. 1

Amend **S.B. 31** by striking all below the enacting clause and substituting the following:

SECTION 1. Subtitle A, Title 2, Civil Practice and Remedies Code, is amended by adding Chapter 10 to read as follows:

**CHAPTER 10. SANCTIONS FOR FRIVOLOUS
PLEADINGS AND MOTIONS**

Sec. 10.001. SIGNING OF PLEADINGS AND MOTIONS. The signing of a pleading or motion as required by the Texas Rules of Civil Procedure constitutes a certificate by the signatory that to the signatory's best knowledge, information, and belief, formed after reasonable inquiry:

(1) the pleading or motion is not being presented for any improper purpose, including to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) each claim, defense, or other legal contention in the pleading or motion is warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) each allegation or other factual contention in the pleading or motion has evidentiary support or, for a specifically identified allegation or factual contention, is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) each denial in the pleading or motion of a factual contention is warranted on the evidence or, for a specifically identified denial, is reasonably based on a lack of information or belief.

Sec. 10.002. MOTION FOR SANCTIONS. (a) A party may make a motion for sanctions, describing the specific conduct violating Section 10.001.

(b) The court on its own initiative may enter an order describing the specific conduct that appears to violate Section 10.001 and direct the alleged violator to show cause why the conduct has not violated that section.

(c) The court may award to a party prevailing on the motion under this section the reasonable expenses and attorney's fees incurred in presenting or opposing the motion, and if no due diligence is shown the court may award to the prevailing party all costs for inconvenience, harassment, and out-of-pocket expenses incurred or caused by the subject litigation.

Sec. 10.003. NOTICE AND OPPORTUNITY TO RESPOND. The court shall provide a party who is the subject of a motion for sanctions under Section 10.002 notice of the allegations and a reasonable opportunity to respond to the allegations.

Sec. 10.004. VIOLATION; SANCTION. (a) A court that determines that a person has signed a pleading or motion in violation of Section 10.001 may impose a sanction on the person, a party represented by the person, or both.

(b) The sanction must be limited to what is sufficient to deter repetition of the conduct or comparable conduct by others similarly situated.

(c) A sanction may include:

(1) a directive to the violator to perform, or refrain from performing, an act;

(2) an order to pay a penalty into court;

(3) an order to pay to the other party the amount of the reasonable expenses incurred by the other party because of the filing of the pleading or motion, including reasonable attorney's fees.

(d) The court may not award monetary sanctions against a represented party for a violation of Section 10.001(2).

(e) The court may not award monetary sanctions on its own initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party or the party's attorney who is to be sanctioned.

Sec. 10.005. ORDER. A court shall describe in an order imposing a sanction under this chapter the conduct the court has determined violated Section 10.001 and explain the basis for the sanction imposed.

Sec. 10.006. CONFLICT. Notwithstanding Section 22.004, Government Code, the supreme court may not amend or adopt rules in conflict with this chapter.

SECTION 2. This Act takes effect September 1, 1995, and applies only to a pleading or motion in a suit commenced on or after that date. A pleading or motion in a suit commenced before the effective date of this Act is governed by the law applicable to the pleading or motion immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 2

Amend C.S.S.B. 31 as follows:

On page 2, line 31 insert the following:

"(f) The filing of a general denial under Rule 92, Texas Rules of Civil Procedure shall not be deemed a violation of this chapter."

Floor Amendment No. 1 on Third Reading

Amend C.S.S.B. 31 on third reading by striking Section 10.004(c), Civil Practice and Remedies Code, and substituting the following:

(c) A sanction may include any of the following:

- (1) a directive to the violator to perform, or refrain from performing, an act;
- (2) an order to pay a penalty into court; and
- (3) an order to pay to the other party the amount of the reasonable expenses incurred by the other party because of the filing of the pleading or motion, including reasonable attorney's fees.

The amendments were read.

On motion of Senator Lucio and by unanimous consent, the Senate concurred in the House amendments to **S.B. 31** by a viva voce vote.

SENATE BILL 32 WITH HOUSE AMENDMENTS

Senator Montford called **S.B. 32** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Floor Amendment No. 1

Amend **S.B. 32** (1st printing) in SECTION 1 of the bill by striking Section 15.001(a), Civil Practice and Remedies Code, and substituting the following:

(a) "Principal office" means a principal office of the corporation, unincorporated association, or partnership in this state in which the decision makers for the organization within this state conduct the daily affairs of the organization. The mere presence of an agency or representative does not establish a "principal office."

Floor Amendment No. 2

Amend **S.B. 32** (House committee report) as follows:

(1) In SECTION 1, at the beginning of Section 15.002, Civil Practice and Remedies Code (page 1, line 16), between "RULE." and "Except", insert "(a)".

(2) In SECTION 1, at the end of Section 15.002, Civil Practice and Remedies Code (page 2, between lines 5 and 6), insert:

(b) For the convenience of the parties and witnesses and in the interest of justice, a court may transfer an action from a county of proper venue under this Subchapter or Subchapter C to any other county of proper venue on motion of a defendant filed and served concurrently with or before the filing of the answer, where the court finds:

(1) maintenance of the action in the county of suit would work an injustice to the movant considering the movant's economic and personal hardship;

(2) the balance of interests of all the parties predominates in favor of the action being brought in the other county; and

(3) the transfer of the action would not work an injustice to any other party.

(c) A court's ruling or decision to grant or deny a transfer under Subsection (b) is not grounds for appeal or mandamus and is not reversible error.

The amendments were read.

On motion of Senator Montford and by unanimous consent, the Senate concurred in the House amendments to **S.B. 32** by a viva voce vote.

RECORD OF VOTE

Senator Barrientos asked to be recorded as voting "Nay" on concurring in the House amendments to **S.B. 32**.

NOMINATIONS RETURNED

On motion of Senator Bivins and by unanimous consent, the Senate agreed to grant the request to return the following nominations to the Governor:

To be a Member of the TEXAS BOARD OF HEALTH: Dr. Brant S. Mittler, Bexar County.

To be a Member of the TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY: April L. Eyeington, Brazos County.

GUESTS PRESENTED

Senator Haywood was recognized and introduced to the Senate a delegation of citizens from Wichita Falls.

The Senate welcomed its guests.

CONCLUSION OF MORNING CALL

The President at 10:29 a.m. announced the conclusion of morning call.

SENATE BILL 453 ON SECOND READING

On motion of Senator Brown and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 453, Relating to the use as collateral of certificates of deposit by an applicant for a license as a bail bondsman.

The bill was read second time and was passed to engrossment by a viva voce vote.

SENATE BILL 453 ON THIRD READING

Senator Brown moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **S.B. 453** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Madla.

The bill was read third time and was passed by a viva voce vote.

CAPITOL PHYSICIAN

Senator Lucio was recognized and presented Dr. Ben Garza of Edinburg as the "Doctor for the Day."

The Senate welcomed Dr. Garza and thanked him for his participation in the "Capitol Physician" program sponsored by the Texas Academy of Family Physicians.

SENATE BILL 476 ON SECOND READING

On motion of Senator Luna and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 476, Relating to the regulation of the practice of naturopathic medicine; providing penalties.

The bill was read second time.

Senator Luna offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **S.B. 476** by inserting in Section 17 a new subsection (8) and renumbering the following subsections accordingly:

"(8) duly licensed Athletic trainers who confine their activities to the functions of an Athletic trainer;"

The committee amendment was read and was adopted by a viva voce vote.

Senator Luna offered the following committee amendment to the bill:

Committee Amendment No. 2

Amend **S.B. 476** in Section 8 of the bill (introduced version, page 7, between lines 23 and 24; committee printing page 4, between lines 13 and 14), by adding Subsections (c) and (d) to read as follows:

(c) A person is qualified to be licensed under this Act without examination if the person:

- (1) is a resident of the state;
- (2) is 18 years of age or older;
- (3) held the person out to the public as a naturopath or naturopathic physician before January 1, 1995;
- (4) is not licensed as a health care provider under any other law in this state;

(5) derives the majority of the person's earned income from the practice of naturopathic medicine; and

(6) applies for a license under this subsection on or before January 1, 1996.

(d) A person licensed under Subsection (c) of this section may practice naturopathic medicine only within a scope of practice that reflects the limits of the person's training and experience. The board may adopt rules providing for limitations on the practice of a person under this subsection and prescribing methods by which a person licensed under Subsection (c) of this section is identified as a person whose practice is limited.

The committee amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to engrossment by a viva voce vote.

SENATE BILL 476 ON THIRD READING

Senator Luna moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **S.B. 476** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Madla.

The bill was read third time and was passed by a viva voce vote.

**COMMITTEE SUBSTITUTE
SENATE BILL 664 ON SECOND READING**

On motion of Senator Lucio and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 664, Relating to removal of county officers from office.

The bill was read second time and was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE
SENATE BILL 664 ON THIRD READING**

Senator Lucio moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.S.B. 664** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Madla.

The bill was read third time and was passed by a viva voce vote.

SENATE BILL 1207 ON SECOND READING

On motion of Senator Ellis and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 1207, Relating to deposit of public funds in banks or savings associations.

The bill was read second time.

Senator Ellis offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **S.B. 1207** as follows:

(1) On page 2, amend lines 6-12 as follows:

(b) A regulated financial institution shall make a report required by this section[:

(1) annually, not later than August 1 of each year; and

~~[(2)]~~ not later than the 30th day after the date the financial institution is notified that a rating has been assigned [the assigned rating has been changed:] that is below that required by this section.

(2) On page 2, amend lines 18-22 as follows:

(b) On receipt of notice of a second consecutive [that the] rating of a financial institution [is changed to a rating] below that required by this section, a public agency shall take immediate action to transfer all public funds on deposit with the institution to a qualified financial institution.

The committee amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to engrossment by a viva voce vote.

(Senator Truan in Chair)

SENATE BILL 1207 ON THIRD READING

Senator Ellis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that S.B. 1207 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Madla.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

SENATE BILL 1212 ON SECOND READING

On motion of Senator Ellis and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 1212, Relating to venue, notice, and attorney general participation in proceedings involving charitable trusts.

The bill was read second time.

Senator Ellis offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend S.B. 1212 as follows:

(1) Strike "a involving" and substitute "involving a" in Subsection (b), Section 123.003 of SECTION 3 of the bill (committee printing page 2, line 22).

(2) Strike "a n" and substitute "an" in Subsection (c), Section 123.003 of SECTION 3 of the bill (committee printing page 2, line 27).

(3) Strike "[in]" and substitute "[is in]" in Subsection (a), Section 123.005 of SECTION 4 of the bill (committee printing page 3, line 3).

(4) Between "at the" and "suit", insert "time" in Subsection (a), Section 123.005 of SECTION 4 of the bill (committee printing page 3, line 5).

The committee amendment was read and was adopted by a viva voce vote.

RECORD OF VOTE

Senator Moncrief asked to be recorded as "Present-not voting" on the adoption of Committee Amendment No. 1.

Senator Ellis offered the following amendment to the bill:

Floor Amendment No. 1

Amend S.B. 1212 as follows:

Strike "has its principal place of business, or has a fixed and established place of business at the time suit is brought" and substitute "or has its principal office" in Subsection (a), Section 123.005 of SECTION 4 of the bill (committee printing page 3, lines 5-6).

The amendment was read and was adopted by a viva voce vote.

RECORD OF VOTE

Senator Moncrief asked to be recorded as "Present-not voting" on the adoption of Floor Amendment No. 1.

The bill as amended was passed to engrossment by a viva voce vote.

RECORD OF VOTE

Senator Moncrief asked to be recorded as "Present-not voting" on the passage of the bill to engrossment.

SENATE BILL 1212 ON THIRD READING

Senator Ellis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that S.B. 1212 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0, Present-not voting 1.

Present-not voting: Moncrief.

Absent-excused: Madla.

The bill was read third time and was passed by a viva voce vote.

RECORD OF VOTE

Senator Moncrief asked to be recorded as "Present-not voting" on the final passage of the bill.

SENATE BILL 1225 ON SECOND READING

On motion of Senator Gallegos and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 1225, Relating to a report on fire protection services by the Texas Commission on Fire Protection.

The bill was read second time and was passed to engrossment by a viva voce vote.

SENATE BILL 1225 ON THIRD READING

Senator Gallegos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **S.B. 1225** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Madla.

The bill was read third time and was passed by a viva voce vote.

**COMMITTEE SUBSTITUTE
SENATE BILL 1376 ON SECOND READING**

On motion of Senator Wentworth and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 1376, Relating to the annexation of certain areas located in certain municipal utility districts.

The bill was read second time.

Senator Barrientos offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.S.B. 1376** as follows:

On page 1, line 25 delete "80" and substitute "75"

On page 1, line 24 between the word "district" and the word "only" add the following:

"for full purposes which is composed of three or more non-contiguous tracts of land and which was created prior to August 27, 1979"

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE
SENATE BILL 1376 ON THIRD READING**

Senator Wentworth moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.S.B. 1376** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Madla.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

SENATE BILL 1508 ON SECOND READING

On motion of Senator Montford and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 1508, Relating to the compensation of the commissioner of education and the payment of certain expenses.

The bill was read second time and was passed to engrossment by a viva voce vote.

SENATE BILL 1508 ON THIRD READING

Senator Montford moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **S.B. 1508** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Madla.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

**COMMITTEE SUBSTITUTE
SENATE BILL 1462 ON SECOND READING**

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 1462, Relating to the authority of a county to operate a water or sewer utility in unincorporated areas of a county, including the authority to acquire property through eminent domain.

The bill was read second time.

Senator Zaffirini offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.S.B. 1462** as follows: at the end of Section 412.015(c), add "A county shall not exercise the power of eminent domain inside the corporate limits of a municipality."

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE
SENATE BILL 1462 ON THIRD READING**

Senator Armbrister moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.S.B. 1462** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Madla.

The bill was read third time and was passed by a viva voce vote.

**COMMITTEE SUBSTITUTE
SENATE BILL 1601 ON SECOND READING**

On motion of Senator Brown and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 1601, Relating to the creation, administration, powers, and duties of the Westchase Area Management District; granting the authority to issue bonds; authorizing a tax.

The bill was read second time and was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE
SENATE BILL 1601 ON THIRD READING**

Senator Brown moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.S.B. 1601** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Madla.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

SENATE BILL 1629 ON SECOND READING

On motion of Senator Henderson and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 1629, Relating to tax rebates for qualified hotel projects.

The bill was read second time and was passed to engrossment by a viva voce vote.

SENATE BILL 1629 ON THIRD READING

Senator Henderson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **S.B. 1629** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Madla.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

(Senator Montford in Chair)

**COMMITTEE SUBSTITUTE
SENATE BILL 1674 ON SECOND READING**

On motion of Senator Harris and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 1674, Relating to the authority of the board of directors of the Tarrant County Water Control and Improvement District No. 1 to provide certain benefits.

The bill was read second time and was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE
SENATE BILL 1674 ON THIRD READING**

Senator Harris moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.S.B. 1674** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Madla.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

SENATE BILL 1676 ON SECOND READING

On motion of Senator Truan and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 1676, Relating to the responsibility of certain governmental entities or corporations created by governmental entities under the Solid Waste Disposal Act.

The bill was read second time.

Senator Truan offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **S.B. 1676** on page 1, Subsection (e), after the word real by striking the word property and substituting the word property.

The committee amendment was read and was adopted by a viva voce vote.

(President in Chair)

Senator Truan offered the following committee amendment to the bill:

Committee Amendment No. 2

Amend **S.B. 1676** as follows:

1) In Subsection (2), (f), after the word residential, add the words or other;

2) In Subsection (2), add a new Subsection (g) to read as follows and reorder the previous subsections accordingly:

(g) The proposed resolution was published in a newspaper of general local circulation in the county in which the property is located, at least 30 days before adoption of the resolution.

3) Add a new Subsection (4) to read as follows:

(4) The properties acquired are restricted by covenants running with the land, recorded in the deed records of the county, and enforceable by the governmental entity, prohibiting residential uses and specifically stating that the property was acquired under this subsection.

The committee amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to engrossment by a viva voce vote.

SENATE BILL 1676 ON THIRD READING

Senator Truan moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **S.B. 1676** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Madla

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

MOTION TO PLACE COMMITTEE SUBSTITUTE

SENATE BILL 309 ON THIRD READING

Senator Harris asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

C.S.S.B. 309, Relating to certain acts of public accountants.

There was objection.

Senator Harris then moved to suspend the regular order of business and take up **C.S.S.B. 309** for consideration at this time.

The motion was lost by the following vote: Yeas 17, Nays 13. (Not receiving two-thirds vote of Members present)

Yeas: Armbrister, Bivins, Galloway, Harris, Haywood, Henderson, Lucio, Moncrief, Montford, Nelson, Nixon, Ratliff, Shapiro, Sibley, Sims, West, Zaffirini.

Nays: Barrientos, Brown, Cain, Ellis, Gallegos, Leedom, Luna, Patterson, Rosson, Truan, Turner, Wentworth, Whitmire.

Absent-excused: Madla.

(Senator Armbrister in Chair)

(President in Chair)

HOUSE BILL 356 ON SECOND READING

On motion of Senator Leedom and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 356, Relating to auxiliary members of an appraisal review board and to the removal of board members.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 356 ON THIRD READING

Senator Leedom moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 356** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Madla.

The bill was read third time and was passed by a viva voce vote.

SENATE BILL 28 WITH HOUSE AMENDMENTS

Senator Sibley called **S.B. 28** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Floor Amendment No. 2

Amend **S.B. 28** (House committee report) as follows:

(1) In SECTION 1, in Section 33.004(a), Civil Practice and Remedies Code (page 5, line 7), strike "**Prior**" and substitute "Except as provided in Subsections (d) and (e), prior".

(2) In SECTION 1, in Section 33.004(b), Civil Practice and Remedies Code, after the period (page 5, line 14), insert "Nothing in this section shall affect the filing of cross-claims or counterclaims."

(3) In SECTION 1, strike Section 33.011(6)(B), Civil Practice and Remedies Code (page 8, lines 3-12), and substitute:

(B) The term "responsible third party" does not include:

(i) an employer who maintained worker's compensation insurance coverage, as defined by Section 401.011(44), Labor Code, at the time of the act, event, or occurrence made the basis of the claimant's suit; or

(ii) a person or entity that is a debtor in bankruptcy proceedings or a person or entity against whom this claimant's claim has been discharged in bankruptcy, except to the extent that liability insurance or other source of third party funding may be available to pay claims asserted against the debtor.

(4) In SECTION 1, strike Section 33.013(c), Civil Practice and Remedies Code (page 10, line 17, through page 11, line 13), and substitute:

(c) Notwithstanding Subsections ~~[Subsection]~~ (a) and (b), each liable defendant is, in addition to his liability under Subsection (a), jointly and severally liable for the damages recoverable by the claimant under Section 33.012 with respect to a cause of action if [:

~~[(1) no percentage of responsibility is attributed to the claimant and]~~ the percentage of responsibility attributed to the defendant is equal to or greater than 15 ~~[10]~~ percent and: ~~[-or]~~

(1) ~~[(2)]~~ the claimant's personal injury, property damage, ~~[or] death, or other harm~~ is caused by the depositing, discharge, or release into the environment of any hazardous or harmful substance as described in Section 33.011(7) ~~[Subdivision (3)]~~; or

(2) ~~[(3)]~~ the claimant's personal injury, property damage, ~~[or] death, or other harm~~ resulted from a ~~[a]~~ toxic tort. ~~["Toxic tort" means a cause of action in tort or for breach of implied warranty under Chapter 2, Business & Commerce Code, arising out of exposure to hazardous chemicals, hazardous wastes, hazardous hydrocarbons, similarly harmful organic or mineral substances, hazardous radiation sources, and other similarly harmful substances (which usually, but need not necessarily, arise in the work place), but not including any "drug" as defined in Section 81.001(3), Civil Practice and Remedies Code.].~~

(5) Strike SECTION 2 (page 14, lines 18-22) and substitute a new SECTION 2 to read as follows:

SECTION 2. This Act takes effect September 1, 1995, and applies to all causes of action that accrue on or after that date. This Act applies to all causes of action that accrued before the effective date of this Act and upon which suit is filed on or after September 1, 1996. A cause of action that accrued before the effective date of this Act and upon which suit is filed prior to September 1, 1996, is governed by the law in effect immediately prior to the effective date of this Act and that law is continued in effect for that purpose.

Floor Amendment No. 3

Amend S.B. 28 as follows:

(1) Following SECTION 1 of the bill (House committee report, page 14, between lines 17 and 18) insert the following new section:

SECTION 2. Title 4, Civil Practice and Remedies Code, is amended by adding Chapter 95 to read as follows:

CHAPTER 95. PROPERTY OWNER'S LIABILITY FOR ACTS OF INDEPENDENT CONTRACTORS AND AMOUNT OF RECOVERY

Sec. 95.001. DEFINITIONS. In this chapter:

(1) "Claim" means a claim for damages caused by negligence, including a counterclaim, crossclaim, or third-party claim.

(2) "Claimant" means party making a claim subject to this chapter.

(3) "Property owner" means a person or entity that owns real property primarily used for commercial or business purposes.

Sec. 95.002 APPLICABILITY. This chapter applies only to a claim:

(1) against a property owner, contractor, or subcontractor for personal injury, death, or property damage to an owner, a contractor, or a subcontractor or an employee of a contractor or subcontractor; and

(2) that arises from the condition or use of an improvement to real property where the contractor or subcontractor constructs, repairs, renovates, or modifies the improvement.

Sec. 95.003. LIABILITY FOR ACTS OF INDEPENDENT CONTRACTORS. A property owner is not liable for a personal injury, death, or property damage to a contractor, subcontractor, or an employee of a contractor or subcontractor, who constructs, repairs, renovates, or modifies an improvement to real property, including a personal injury, death, or property damage arising from the failure to provide a safe workplace unless:

(1) the property owner exercises or retains some control over the manner in which the work is performed, other than the right to order the work to start or stop or to inspect progress or receive reports; and

(2) the property owner had actual knowledge of the danger or condition resulting in the personal injury, death, or property damage and failed to adequately warn.

Sec. 95.004 EVIDENCE ADMISSIBLE. In the trial of a case against a contractor, subcontractor, or property owner for personal injury, property damage, or death to a contractor, a subcontractor, or an employee of a contractor or subcontractor that arises from the condition or use of an improvement to real property where the contractor or subcontractor constructs, repairs, renovates, or modifies the improvement, the trial judge, outside the presence of the jury, shall receive evidence of workers' compensation benefits paid and shall deduct the amount of the benefits from the damages awarded by the trier of fact. The deduction for workers' compensation benefits does not apply unless the workers' compensation carrier's subrogation rights have been waived.

(2) Renumber subsequent sections of the bill accordingly.

Floor Amendment No. 1 on Third Reading

Amend S.B. 28 on 3rd reading as follows:

Amend 2nd reading Floor Amendment No. 1 to S.B. 28 by striking the first line of Subsection 33.011(6)(B)(i) and substituting the following:

"(i) the claimant's employer, if the employer maintained workers'"

Floor Amendment No. 2 on Third Reading

Amend S.B. 28 on third reading by amending the second reading amendment by Junell by adding an amendment (6) to read as follows:

(6) Add a new section appropriately numbered to read as follows:

SECTION ____ Notwithstanding Section 2 of this Act, Chapter 95, Civil Practice and Remedies Code, as added by this Act, takes effect September 1, 1996 and applies only to a cause of action that accrues on or after that date.

The amendments were read.

On motion of Senator Sibley and by unanimous consent, the Senate concurred in the House amendments to S.B. 28 by a viva voce vote.

RECORD OF VOTE

Senator Barrientos asked to be recorded as voting "Nay" on concurring in the House amendments to **S.B. 28**.

**SENATE CONCURRENT RESOLUTION 70
ON SECOND READING**

On motion of Senator Brown and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading:

S.C.R. 70, Granting CIT Construction Incorporated of Texas permission to sue the State of Texas and The University of Texas System.

The resolution was read second time and was adopted by a viva voce vote.

GUESTS PRESENTED

Senator Patterson was recognized and introduced to the Senate the Friendswood High School State Championship Decathlon team.

The Senate welcomed its guests.

(Senator Brown in Chair)

**COMMITTEE SUBSTITUTE
HOUSE BILL 3157 ON SECOND READING**

On motion of Senator Wentworth and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 3157, Relating to the board of certain metropolitan rapid transit authorities.

The bill was read second time.

Senator Wentworth offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.H.B. 3157** by striking SECTIONS 5 and 6 of the bill and substituting the following:

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 3157 ON THIRD READING**

Senator Wentworth moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 3157** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Madla.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

(President in Chair)

HOUSE BILL 1336 ON SECOND READING

On motion of Senator Luna and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1336, Relating to authorizing public junior colleges to offer courses for joint high school and junior college credit.

The bill was read second time.

Senator Luna offered the following amendment to the bill:

Floor Amendment No. 1

Amend **H.B. 1336**, page 2 after line 4, by adding subsection (d) to Section 130.008 as follows:

(d) For instances when state funding is provided to both a school district and a public junior college for a student enrolled in courses offered by a junior college under Subsection (a), the commissioner of education and the commissioner of higher education shall jointly develop a mechanism to identify and eliminate duplication of state funding.

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 1336 ON THIRD READING

Senator Luna moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 1336** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Madla.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

SENATE BILL 1217 ON SECOND READING

On motion of Senator Ellis and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 1217, Relating to notification of certain interest holders and owners of seized contraband in forfeiture proceedings; providing that asset forfeiture is remedial in nature rather than punitive.

The bill was read second time.

Senator Ellis offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **S.B. 1217** SECTION 2 as follows:

On line 20, strike the words after "forfeiture" through the word "it" on line 21.

The committee amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to engrossment by a viva voce vote.

SENATE BILL 1217 ON THIRD READING

Senator Ellis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **S.B. 1217** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Madla.

The bill was read third time and was passed by a viva voce vote.

(Senator Leedom in Chair)

(President in Chair)

COMMITTEE SUBSTITUTE

SENATE BILL 1688 ON SECOND READING

On motion of Senator Truan and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 1688, Relating to the establishment of the line of vegetation along the Gulf of Mexico where a natural vegetation line does not exist.

The bill was read second time and was passed to engrossment by a viva voce vote.

COMMITTEE SUBSTITUTE

SENATE BILL 1688 ON THIRD READING

Senator Truan moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.S.B. 1688** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Madla.

The bill was read third time and was passed by a viva voce vote.

**COMMITTEE SUBSTITUTE
SENATE BILL 511 ON SECOND READING**

On motion of Senator Henderson and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 511, Relating to covenants not to compete.

The bill was read second time.

Senator Henderson offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.S.B. 511** by striking all below the enacting clause and substituting the following:

SECTION 1. Subchapter E, Section 15.50, Business and Commerce Code, is amended to read as follows:

Sec. 15.50. CRITERIA FOR ENFORCEABILITY OF COVENANT NOT TO COMPETE. Notwithstanding Section 15.05 of this code, a covenant not to compete is enforceable if it is ancillary to or part of an otherwise enforceable agreement or an otherwise valid transaction or relationship, except to the extent that it contains limitations on scope of activity, duration, or territory that are unreasonable and imposes a restraint greater [at the time the agreement is made to the extent that it contains limitations as to time, geographical area, and scope of activity to be restrained that are reasonable and do not impose a greater restraint] than is necessary to protect the goodwill or other business interest of the promisee.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE
SENATE BILL 511 ON THIRD READING**

Senator Henderson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.S.B. 511** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Madla.

The bill was read third time and was passed by a viva voce vote.

HOUSE BILL 654 REREFERRED

On motion of Senator Henderson and by unanimous consent, **H.B. 654** was withdrawn from the Committee on State Affairs and was rereferred to the Committee on Jurisprudence.

SENATE BILL 1700 REREFERRED

On motion of Senator Wentworth and by unanimous consent, **S.B. 1700** was withdrawn from the Committee on State Affairs and was rereferred to the Committee on Natural Resources.

**SENATE RULE 11.19 SUSPENDED
(Posting Rule)**

On motion of Senator Henderson and by unanimous consent, Senate Rule 11.19 was suspended in order that the Committee on Jurisprudence might consider **H.B. 654** tomorrow.

SENATE BILL 1032 WITH HOUSE AMENDMENT

Senator Harris called **S.B. 1032** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Floor Amendment No. 1

Amend **S.B. 1032** as follows:

In Article 1, on page 1, line 12 delete "designated as a homestead".

In Article 2, on page 2, line 15 delete "designated as a homestead".

The amendment was read.

Senator Harris moved to concur in the House amendment to **S.B. 1032**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Madla.

**SENATE RULE 11.19 SUSPENDED
(Posting Rule)**

On motion of Senator Armbrister and by unanimous consent, Senate Rule 11.19 was suspended in order that the Committee on State Affairs might consider the following bill and resolution today:

S.B. 377

S.J.R. 58

MEMORIAL RESOLUTIONS

S.R. 986 - By Luna: In memory of Genaro C. Rodriguez of San Antonio.

S.R. 987 - By Truan: In memory of Francisca R. Trevino of Mathis.

S.R. 988 - By Truan: In memory of Marion Robinson Uehlinger of Nueces County.

CONGRATULATORY RESOLUTIONS

S.C.R. 142 - By Barrientos: Commemorating the month of May, 1995, as Older Americans' Month.

S.C.R. 143 - By Barrientos: Recognizing the Austin Division of the Casey Family Program for its service to the community.

S.R. 937 - By West: Congratulating Dr. Napoleon B. Lewis, Sr., on the dedication of the Napoleon B. Lewis, Sr., Mathematics and Science Annex at Lincoln Magnet High School in Dallas.

S.R. 938 - By Haywood: Recognizing Gena Denise Woodard for her selection as Wichita Falls Independent School District's Teacher of the Year, 1994-1995.

S.R. 939 - By Haywood: Recognizing David C. Gaar for his selection as Wichita Falls Independent School District's Teacher of the Year, 1994-1995.

S.R. 940 - By Haywood: Recognizing Toni M. Chrz for her selection as Wichita Falls Independent School District's Teacher of the Year, 1994-1995.

S.R. 941 - By Haywood: Recognizing Dolores D. Morris for her selection as Wichita Falls Independent School District's Teacher of the Year, 1994-1995.

S.R. 942 - By Haywood: Recognizing Patricia Rippin for her selection as Wichita Falls Independent School District's Teacher of the Year, 1994-1995.

S.R. 943 - By Haywood: Recognizing Karen Badgwell for her selection as Wichita Falls Independent School District's Teacher of the Year, 1994-1995.

S.R. 944 - By Haywood: Recognizing Mary McKay for her selection as Wichita Falls Independent School District's Teacher of the Year, 1994-1995.

S.R. 945 - By Haywood: Recognizing Kelli Kitchens for her selection as Wichita Falls Independent School District's Teacher of the Year, 1994-1995.

S.R. 946 - By Haywood: Recognizing Gaynelle McGee for her selection as Wichita Falls Independent School District's Teacher of the Year, 1994-1995.

S.R. 947 - By Haywood: Recognizing Patricia L. Farris for her selection as Wichita Falls Independent School District's Teacher of the Year, 1994-1995.

S.R. 948 - By Haywood: Recognizing Julia Ketner for her selection as Wichita Falls Independent School District's Teacher of the Year, 1994-1995.

S.R. 949 - By Haywood: Recognizing Deborah Wadsworth for her selection as Wichita Falls Independent School District's Teacher of the Year, 1994-1995.

S.R. 950 - By Haywood: Recognizing Kim Meyer for her selection as Wichita Falls Independent School District's Teacher of the Year, 1994-1995.

S.R. 951 - By Haywood: Recognizing Mary Beth Anderson for her selection as Wichita Falls Independent School District's Teacher of the Year, 1994-1995.

S.R. 952 - By Haywood: Recognizing Mark A. Schnuelle for his selection as Wichita Falls Independent School District's Teacher of the Year, 1994-1995.

S.R. 953 - By Haywood: Recognizing Rhonda Allen for her selection as Wichita Falls Independent School District's Teacher of the Year, 1994-1995.

S.R. 954 - By Haywood: Recognizing Kirk A. Shaffer for his selection as Wichita Falls Independent School District's Teacher of the Year, 1994-1995.

S.R. 955 - By Haywood: Recognizing Paula Heathington for her selection as Wichita Falls Independent School District's Teacher of the Year, 1994-1995.

S.R. 956 - By Haywood: Recognizing Leigh Boatman for her selection as Wichita Falls Independent School District's Teacher of the Year, 1994-1995.

S.R. 957 - By Haywood: Recognizing Judith D. Morgan for her selection as Wichita Falls Independent School District's Teacher of the Year, 1994-1995.

S.R. 958 - By Haywood: Recognizing E. Wanda Shelton for her selection as Wichita Falls Independent School District's Teacher of the Year, 1994-1995.

S.R. 959 - By Haywood: Recognizing Judith Austin for her selection as Wichita Falls Independent School District's Teacher of the Year, 1994-1995.

S.R. 960 - By Haywood: Recognizing Anna J. Hays for her selection as Wichita Falls Independent School District's Teacher of the Year, 1994-1995.

S.R. 961 - By Haywood: Recognizing Vicky Lynn Herchman for her selection as Wichita Falls Independent School District's Teacher of the Year, 1994-1995.

S.R. 962 - By Haywood: Recognizing Michelle Wallace for her selection as Wichita Falls Independent School District's Teacher of the Year, 1994-1995.

S.R. 963 - By Haywood: Recognizing Cynthia Lynn Parker for her selection as Wichita Falls Independent School District's Teacher of the Year, 1994-1995.

S.R. 964 - By Haywood: Recognizing Helen Milstead for her selection as Wichita Falls Independent School District's Teacher of the Year, 1994-1995.

S.R. 965 - By Haywood: Recognizing Sandy Ruiz for her selection as Wichita Falls Independent School District's Teacher of the Year, 1994-1995.

S.R. 966 - By Haywood: Recognizing Carol Berzina for her selection as Wichita Falls Independent School District's Teacher of the Year, 1994-1995.

S.R. 967 - By Haywood: Recognizing Judy K. Smith for her selection as Wichita Falls Independent School District's Teacher of the Year, 1994-1995.

S.R. 968 - By Haywood: Recognizing Linda Boyd for her selection as Wichita Falls Independent School District's Teacher of the Year, 1994-1995.

S.R. 969 - By Haywood: Recognizing Michelle Vassar Cassetty for her selection as Wichita Falls Independent School District's Teacher of the Year, 1994-1995.

S.R. 970 - By Haywood: Recognizing Pam S. Alexander for her selection as Wichita Falls Independent School District's Teacher of the Year, 1994-1995.

S.R. 971 - By Haywood: Recognizing Joseph Douglas Montgomery on achieving the rank of Eagle Scout.

S.R. 972 - By Haywood: Recognizing Debbi Schmidt for her selection as Wichita Falls Independent School District's Teacher of the Year, 1994-1995.

S.R. 973 - By Haywood: Recognizing Laura L. Young for her selection as Wichita Falls Independent School District's Teacher of the Year, 1994-1995.

S.R. 974 - By Haywood: Recognizing W. Pat Page for being selected as Wichita Falls Independent School District's Teacher of the Year, 1994-1995.

S.R. 975 - By Haywood: Recognizing Evelyn F. McGee for her selection as Wichita Falls Independent School District's Teacher of the Year, 1994-1995.

S.R. 976 - By Haywood: Recognizing Sheila Hise for her selection as Wichita Falls Independent School District's Teacher of the Year, 1994-1995.

S.R. 977 - By Haywood: Recognizing Judy Muir for her selection as Wichita Falls Independent School District's Teacher of the Year, 1994-1995.

S.R. 978 - By Haywood: Recognizing Debbie Ozee for her selection as Wichita Falls Independent School District's Teacher of the Year, 1994-1995.

S.R. 979 - By Henderson: Congratulating Geoffry M. Neundorfer of Houston on achieving the rank of Eagle Scout.

S.R. 980 - By Henderson: Congratulating David Hackenson of Houston on achieving the rank of Eagle Scout.

S.R. 981 - By Henderson: Congratulating Javier Alcala of Houston on achieving the rank of Eagle Scout.

S.R. 982 - By Henderson: Congratulating Michael L. Everett, Jr., of Spring on achieving the rank of Eagle Scout.

S.R. 983 - By Henderson: Congratulating Randy L. and Melissa K. Wooten on the birth of their daughter, Alexandra Rae Wooten.

S.R. 984 - By Luna: Congratulating Gardner Selby for his achievements and contributions in the field of journalism.

S.R. 985 - By Luna: Recognizing Mr. and Mrs. William B. Buyers on their 50th wedding anniversary.

S.R. 989 - By Lucio: Congratulating Cameron County Commissioner James Matz for receiving a service award from the Points of Light Foundation.

S.R. 990 - By Barrientos: Recognizing Dixie Briggs on the occasion of her retirement from the teaching profession.

H.C.R. 96 - (West): Commending America's minority veterans of World War II for their service to their country.

H.C.R. 97 - (West): Congratulating Dr. James L. Sweatt III on his installation as the 1995 president of the Dallas County Medical Society.

ADJOURNMENT

On motion of Senator Truan, the Senate at 11:45 a.m. adjourned, in memory of those who lost their lives during the recent storms in Tarrant County and the surrounding area, until 9:00 a.m. tomorrow.

APPENDIX

REPORTS OF STANDING COMMITTEES

The following committee reports were received by the Secretary of the Senate:

May 8, 1995

NATURAL RESOURCES — C.S.S.B. 1683, C.S.H.B. 1989

STATE AFFAIRS — H.B. 321, H.B. 795, H.B. 1914, H.B. 2283,
H.C.R. 69, C.S.S.B. 1314, S.B. 1707 (Amended), S.C.R. 91, C.S.S.B. 377

SIGNED BY GOVERNOR

(May 5, 1995)

S.B. 260 (Effective September 1, 1995)
S.B. 314 (Effective September 1, 1995)
S.B. 371 (Effective September 1, 1995)
S.B. 436 (Effective immediately)
S.B. 821 (Effective immediately)
S.B. 864 (Effective September 1, 1995)
S.B. 958 (Effective September 1, 1995)
S.B. 1172 (Effective August 28, 1995)
H.B. 2 (Effective August 28, 1995)
H.B. 721 (Effective immediately)
H.B. 1178 (Effective immediately)
H.B. 1207 (Effective August 28, 1995)

SIXTY-SEVENTH DAY

(Tuesday, May 9, 1995)

The Senate met at 9:00 a.m. pursuant to adjournment and was called to order by Senator Truan.

The roll was called and the following Senators were present: Armbrister, Barrientos, Bivins, Brown, Cain, Ellis, Gallegos, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Luna, Madla, Moncrief, Montford, Nelson, Nixon, Patterson, Ratliff, Rosson, Shapiro, Sibley, Sims, Truan, Turner, Wentworth, West, Whitmire, Zaffirini.

A quorum was announced present.

The Reverend Will Davis, Jr., Austin Christian Fellowship, offered the invocation as follows:

Almighty God, we acknowledge Your greatness today, and we acknowledge our dependence upon You. We thank You for the occasion that warrants this gathering today, and we ask for You to be a very real part of it. I thank You for these men and women, these who have been selected by the people of Texas and by You to be public servants. I pray that they would fully embrace the gravity of their task, and that they would serve humbly and with a true sense of the stewardship that is theirs. Father, Your word says that if we ask for wisdom that You will grant it; and we ask today for these leaders. May the wisdom that they manifest today go far

beyond what would normally, naturally be theirs. Give them a sense of what is true, and right, and good, and best for this great state. And now, Father, may all that happens here today be consistent, ultimately, with Your great ways. We pray these things in Your name. Amen.

On motion of Senator Leedom and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

CO-AUTHOR OF SENATE BILL 1683

On motion of Senator Nixon and by unanimous consent, Senator Madla will be shown as Co-author of **S.B. 1683**.

CO-SPONSOR OF HOUSE BILL 1537

On motion of Senator Brown and by unanimous consent, Senator Harris will be shown as Co-sponsor of **H.B. 1537**.

MESSAGE FROM THE HOUSE

House Chamber
May 9, 1995

Mr. President: I am directed by the House to inform the Senate that the House has passed the following:

The House has granted the request of the Senate for the appointment of a conference committee for **S.B. 1**. The House conferees are: Representatives Sadler, Chair; Hernandez, Williamson, Dear, and Hochberg.

The House has concurred in Senate amendments to **H.B. 1552** by a non-record vote.

H.J.R. 72, Proposing a constitutional amendment relating to the ad valorem taxation of open-space land used for wildlife management.

H.J.R. 82, Proposing a constitutional amendment granting the legislature authority to release the state's interest in land that is held by a person in good faith under color of title.

Respectfully,

Cynthia Gerhardt, Chief Clerk
House of Representatives

PERMISSION TO INTRODUCE BILLS

On motion of Senator Leedom and by unanimous consent, Article III, Section 5 of the Texas Constitution and Senate Rule 7.07(b) were suspended to permit the introduction of the following bills:

S.B. 34	S.B. 1712
S.B. 1709	S.B. 1713
S.B. 1710	S.B. 1714
S.B. 1711	

SENATE BILLS AND RESOLUTION ON FIRST READING

The following bills and resolution were introduced, read first time, and referred to the committees indicated:

S.C.R. 138 by Montford Finance
Urging the United States Congress to extend to noncorporate farmers, entities, and individuals the Internal Revenue Code tax incentive for charitable donations.

S.B. 34 by Nixon Jurisprudence
Relating to improving the judicial system in Panola County.

S.B. 1709 by Rosson Natural Resources
Relating to the validation of certain acts of, including the exclusion of land from, the El Paso County Water Authority.

S.B. 1710 by West Finance
Relating to authorizing a municipal tax to provide affordable housing in populous municipalities.

S.B. 1711 by Sibley Natural Resources
Relating to the authority of cities to contract for water supply from the Upper Leon River Municipal Water District.

S.B. 1712 by Galloway Intergovernmental Relations
Relating to commissioning peace officers to protect persons and property at housing authorities.

S.B. 1713 by Lucio Finance
Relating to tuition for a resident of Mexico who registers at a component of the Texas State Technical College System.

S.B. 1714 by Bivins Natural Resources
Relating to the creation, administration, powers, duties, operation, and financing of the Oldham County Underground Water Conservation District.

MESSAGE FROM THE GOVERNOR

The following Message from the Governor was read and was referred to the Committee on Nominations:

Austin, Texas
May 9, 1995

TO THE SENATE OF THE SEVENTY-FOURTH LEGISLATURE,
REGULAR SESSION:

I ask the advice, consent and confirmation of the Senate with respect to the following appointment:

TO BE A MEMBER OF THE TEXAS COMMISSION OF LICENSING
AND REGULATION for a term to expire February 1, 2001:

JOHN W. "WIL" GALLOWAY
P.O. Box 252
Beeville, Texas 78104

Mr. Galloway will be replacing Becky Moeller of Corpus Christi, whose term expired.

Respectfully submitted,

/s/George W. Bush
Governor of Texas

HOUSE BILLS AND RESOLUTIONS ON FIRST READING

The following bills and resolutions received from the House were read first time and referred to the committees indicated:

H.C.R. 4 to Committee on Administration.
H.C.R. 128 to Committee on State Affairs.
H.B. 244 to Committee on State Affairs.
H.B. 340 to Committee on Finance.
H.B. 483 to Committee on State Affairs.
H.B. 742 to Committee on Intergovernmental Relations.
H.B. 768 to Committee on Jurisprudence.
H.B. 817 to Committee on Jurisprudence.
H.B. 828 to Committee on Intergovernmental Relations.
H.B. 841 to Committee on Intergovernmental Relations.
H.B. 895 to Committee on Natural Resources.
H.B. 1205 to Committee on Finance.
H.B. 1225 to Committee on State Affairs.
H.B. 1293 to Committee on Economic Development.
H.B. 1375 to Committee on State Affairs.
H.B. 1417 to Committee on Intergovernmental Relations.
H.B. 1481 to Committee on Jurisprudence.
H.B. 1714 to Committee on Economic Development.
H.B. 1717 to Committee on Intergovernmental Relations.
H.B. 1763 to Committee on State Affairs.
H.B. 1774 to Committee on Jurisprudence.
H.B. 1810 to Committee on Intergovernmental Relations.
H.B. 1819 to Committee on Economic Development.
H.B. 1844 to Committee on Intergovernmental Relations.
H.B. 1885 to Committee on Economic Development.
H.B. 1943 to Committee on Jurisprudence.
H.B. 2289 to Committee on Criminal Justice.
H.B. 2314 to Committee on Education.
H.B. 2315 to Committee on Natural Resources.
H.B. 2352 to Committee on Health and Human Services.
H.B. 2398 to Committee on Jurisprudence.
H.B. 2463 to Committee on Jurisprudence.
H.B. 2487 to Committee on Economic Development.
H.B. 2501 to Committee on Economic Development.
H.B. 2507 to Committee on Education.
H.B. 2540 to Committee on State Affairs.
H.B. 2553 to Committee on Economic Development.
H.B. 2580 to Committee on Finance.

H.B. 2613 to Committee on Finance.
H.B. 2640 to Committee on Education.
H.B. 2661 to Committee on Finance.
H.B. 2684 to Committee on Intergovernmental Relations.
H.B. 2686 to Committee on Intergovernmental Relations.
H.B. 2698 to Committee on Health and Human Services.
H.B. 2754 to Committee on State Affairs.
H.B. 2781 to Committee on Jurisprudence.
H.B. 2860 to Committee on Finance.
H.B. 2873 to Committee on Intergovernmental Relations.
H.B. 2898 to Committee on Health and Human Services.
H.B. 2940 to Committee on Finance.
H.B. 2969 to Committee on Intergovernmental Relations.
H.B. 2980 to Committee on Intergovernmental Relations.
H.B. 2989 to Committee on Intergovernmental Relations.
H.B. 3053 to Committee on Natural Resources.
H.B. 3079 to Committee on Finance.
H.B. 3120 to Committee on Health and Human Services.
H.B. 3165 to Committee on Jurisprudence.
H.B. 3188 to Committee on Jurisprudence.
H.B. 3195 to Committee on Criminal Justice.
H.B. 3196 to Committee on Jurisprudence.
H.B. 3199 to Committee on State Affairs.
H.B. 3207 to Committee on Jurisprudence.

SENATE BILL 1125 WITH HOUSE AMENDMENT

Senator Nixon called S.B. 1125 from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Committee Amendment No. 1

Amend S.B. 1125 as follows:

(1) In SECTION 2 of the bill, in Section 382.0561, strike proposed subsection (e), Health and Safety Code, (page 2, line 15) and substitute new subsection (e) to read as follows:

(e) Notwithstanding other provision of this chapter, the commission may hold a hearing on a permit amendment, modification, or renewal if the board determines that the application involves a facility for which the applicant's compliance history contains violations which are unresolved, and which constitute a recurring pattern of egregious conduct which demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations.

(2) Strike SECTION 3 and SECTION 4 of the bill (page 2, line 22), and substitute new SECTION 3 to read as follows:

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an

imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator Nixon moved to concur in the House amendment to **S.B. 1125**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

SENATE BILL 1126 WITH HOUSE AMENDMENT

Senator Nixon called **S.B. 1126** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Committee Amendment No. 1

Amend **S.B. 1126** as follows:

(1) In SECTION 1 of the bill, in Section 382.003(9)(E)(i), Health and Safety Code, (page 2, line 8) between "permit" and "or" insert "permit amendment".

(2) In SECTION 2 of the bill, in subsection (b) of Section 382.0512, Health and Safety Code, (page 3, line 22), between "facility" and "results" insert "that meets the criteria of Section 382.003(9)(E)"; and strike the words "under Section 382.003(9)(E)".

(3) In SECTION 2 of the bill, in subsection (b)(2) of Section 382.0512, Health and Safety Code, (page 4, line 3), between "permit" and "or" insert "or permit amendment".

(4) In SECTION 2 of the bill, Section 382.0512, Health and Safety Code, (page 4, line 8), strike existing subsection (c) and substitute new subsection (c) to read as follows:

(c) Nothing in this section shall be construed to limit the application of otherwise applicable state or federal requirements, nor shall this section be construed to limit the board's powers of enforcement under this chapter.

(5) Strike SECTION 4 and SECTION 5 of the bill (page 4, line 15), and substitute a new SECTION 4 to read as follows:

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator Nixon moved to concur in the House amendment to **S.B. 1126**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

CONCLUSION OF MORNING CALL

The Presiding Officer at 9:20 a.m. announced the conclusion of morning call.

HOUSE BILL 1968 ON SECOND READING

On motion of Senator Brown and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1968, Relating to the representative of industrial energy consumers on the Texas Energy Coordination Council.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 1968 ON THIRD READING

Senator Brown moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 1968** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

COMMITTEE SUBSTITUTE**SENATE BILL 1663 ON SECOND READING**

On motion of Senator Rosson and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 1663, Relating to the creation, administration, powers, duties, functions, operation, and financing of the Paseo del Este Municipal Utility District; providing for the authorization of bonds and the levy of taxes; providing civil penalties.

The bill was read second time.

Senator Rosson offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.S.B. 1663** by striking all below the enacting clause and substituting in lieu thereof the following:

ARTICLE 1. GENERAL PROVISIONS

SECTION 1.01. CREATION. (a) By virtue of Section 59, Article XVI, Texas Constitution, a conservation and reclamation district is hereby created to be known as Paseo del Este Municipal Utility District (hereinafter the "district"), which shall be a governmental agency and a body politic and corporate.

(b) The district is created under and is essential to accomplish the purposes of Section 59, Article XVI, Texas Constitution. The district shall have all of the powers of municipal utility districts established under

Chapter 54, Water Code, and the district shall conduct its affairs subject to Chapters 50 and 54, Water Code, unless otherwise provided in this Act.

SECTION 1.02. TERRITORY. (a) The district shall comprise all of the following territory: Section 315 1/2, C. D. Stewart Survey, El Paso County, Texas; Section 318, C. D. Stewart Survey, El Paso County, Texas; Section 319, C. D. Stewart Survey, El Paso County, Texas; all of the south one-half of Section 18, Texas and Pacific Railroad Company Survey, Block 79, Township 3, El Paso County, Texas; all of the northeast one-fourth of Section 18, Texas and Pacific Railroad Company Survey, Block 79, Township 3, El Paso County, Texas, **SAVE AND EXCEPT** the south 655 feet of said northeast one-fourth; all of Section 22, Texas and Pacific Railroad Company Survey, Block 79, Township 3, El Paso County, Texas, **SAVE AND EXCEPT:** (1) 7.889 acres, being the remainder of a 38.18 acre tract, as described in deed from Texas Pacific Land Trust to Socorro Independent School District, recorded in Volume 1302, Page 769, Real Property Records of El Paso County, Texas, (2) Tracts 2 and 3, as described in deed from the State of Texas to 375/10 Texas Land L.P., recorded in Volume 2595, Page 1504, Real Property Records of El Paso County, Texas, (3) Tracts 2 and 3, as described in deed from the State of Texas to MBJR Trust and Barry Lang, recorded in Volume 2595, Page 1517, Real Property Records of El Paso County, Texas, (4) the northwest one-fourth of said Section 22; (5) Parcel I, as described in deed from Surety Savings Association to the State of Texas, recorded in Volume 2043, Page 1726, Real Property Records of El Paso County, Texas; (6) 17.875 acres out of the 40.794 acre Tract I described in deed from Socorro Independent School District to the State of Texas, recorded in Volume 2361, Page 831, Real Property Records of El Paso County, Texas; and (7) the southwest 1/4, Section 20, Block 79, Township 3, Texas and Pacific Railroad Company Survey, El Paso County, Texas.

(b) A mistake in the patents or field notes, or in copying the patents or field notes in the legislative process, does not affect the organization, existence, or validity of the district, the rights of the district to issue bonds or refunding bonds, or to pay the principal of or interest on the bonds, the right of the district to levy and collect taxes, or the legality or operation of the district or its board.

(c) Land included within the boundaries of a special utility district created under Section 59, Article XVI, Texas Constitution, which is subject to a district's outstanding indebtedness secured by taxes or net revenues on the effective date of this Act shall not be included within the district. If the property described in Subsection (a) of this section includes any land subject to a tax or net revenue pledged by a district, it shall be excluded, and the remainder of this Act shall not be affected thereby.

ARTICLE 2. ADMINISTRATIVE PROVISIONS

SECTION 2.01. BOARD. The district shall be governed by and all powers of the district shall be exercised by a board of five directors.

SECTION 2.02. DIRECTOR ELIGIBILITY. Other than initial directors, to be eligible for appointment as a director, a person must meet the requirements of Section 54.102, Water Code. To be eligible for

appointment as an initial director, a person must be a member of the School Land Board or a resident of El Paso County or Travis County. Employment with a state agency shall not disqualify a person for appointment to the board under Section 50.026, Water Code.

SECTION 2.03. TERMS OF DIRECTORS AND APPOINTMENT PROCEDURES. (a) Other than initial directors, directors serve staggered terms of four years, with terms expiring September 1 of each odd-numbered year.

(b) Appointment of initial directors shall be made promptly by the School Land Board after this Act takes effect. The School Land Board shall appoint two initial directors to serve terms expiring September 1, 1997, and three initial directors to serve terms expiring September 1, 1999. If an initial director dies, resigns, or is otherwise removed, the School Land Board shall appoint a successor to serve the unexpired term. When a director's term expires, his successor shall be elected as provided in Section 2.04 of this Act.

SECTION 2.04. ELECTION OF PERMANENT DIRECTORS. (a) Each director shall serve his term of office as herein provided, and thereafter until his successor shall be appointed or elected and qualified. Elections for the appropriate number of permanent directors are to be held on the first Saturday in May of each odd-numbered year. The directors serve until September 1 of the second odd-numbered year after the date of the election.

(b) Notice of elections shall be given by the board of directors by publishing a copy thereof once a week for two consecutive weeks in a newspaper of general circulation in the district, the first publication being at least 14 days prior to the election.

(c) Owners of land within the district shall be the only qualified voters in the confirmation election to be held under Section 54.026, Water Code. Each qualified voter in such election shall have one vote per 500 acres of land owned within the district. This subsection applies in the event of division of the district under Article 8 of this Act.

SECTION 2.05. QUALIFIED VOTERS. If any owner of over 500 acres of land within the district is a constitutional fund of the state, the members of the state board responsible for administering the land holdings of such fund shall each be qualified voters within the district.

SECTION 2.06. QUALIFICATION OF DIRECTOR. Except for initial directors, no person shall be qualified to serve as a director unless he resides in and owns taxable property in the district. Initial directors shall be over 18 years of age and residents of either El Paso County or Travis County. No employee of the district shall serve as director. Directors shall subscribe the constitutional oath of office. Except for the initial directors, each director shall give bond for the faithful performance of his duties as is required by Section 54.116, Water Code, the cost of which shall be paid by the district.

SECTION 2.07. MEETINGS AND ACTIONS OF BOARD. (a) The board may establish regular meetings to conduct district business and may hold special meetings at other times as the business of the district requires.

The board shall hold its meetings within the district unless the board, by a majority vote at a public meeting, votes to hold a meeting or meetings outside the district.

(b) A majority of the directors shall constitute a quorum of the board. A vote of a majority of the quorum present shall be necessary to pass on any question before the board. The board may adopt bylaws to govern its affairs. The board may adopt a seal for the district. The board may provide in the bylaws that, except for the initial directors, each director shall receive a fee of \$20 for attending each meeting of the board, provided that not more than \$40 shall be paid to any director for meetings held in any one calendar month.

SECTION 2.08. ORGANIZATION OF BOARD. The board of directors shall elect from its members a president and a vice president of the district and such other officers as in the judgment of the board are necessary. The president shall be the chief executive officer of the district and the presiding officer of the board and shall have the same right to vote as any other director. The vice president shall perform all duties and exercise all powers conferred by this Act on the president when the president is absent or fails or declines to act. The board shall also appoint a secretary and a treasurer who may or may not be members of the board, and it may combine such offices. The treasurer shall give bond in the amount required by the board of directors, but in no event less than \$100,000. The condition of the bond shall be that the treasurer will faithfully account for all money which comes into the treasurer's custody. Until the district authorizes the issuance of bonds, the amount of the official bond of the treasurer may be fixed by the board of directors in an amount not less than \$5,000.

SECTION 2.09. INTEREST IN CONTRACT. A director who is financially interested in a contract proposed to be executed by the district for the purchase of property or services or for the construction of facilities shall disclose the interest to the board and may not vote on the acceptance of the contract.

SECTION 2.10. DISTRICT EMPLOYEES. The board shall have authority to employ a general manager and all consulting engineers, financial consultants, attorneys, and auditors. The general manager shall be responsible for:

- (1) administering the board's directives;
- (2) keeping the district's records, including minutes of board meetings;
- (3) coordinating with federal, state, and local agencies;
- (4) developing plans and programs for the board's approval;
- (5) hiring, supervising, training, and discharging the district's employees;
- (6) obtaining technical, scientific, legal, fiscal, and other professional services; and
- (7) performing any other duties the board assigns.

SECTION 2.11. EMPLOYEE BONDS. (a) The general manager and each employee of the district who is charged with the collection, custody,

or payment of any money of the district shall execute a fidelity bond in an amount determined by the board and in a form and with a surety approved by the board.

(b) The district shall pay the premium on each employee bond under this section.

SECTION 2.12. PRINCIPAL OFFICE. Until such time as it issues bonds, the district may maintain its principal office in either El Paso County or Travis County, provided that, if the district maintains its principal office in Travis County, it shall maintain duplicate records in El Paso County, and the duplicate records shall be available for inspection during regular business hours. After it issues bonds, the district shall maintain its office in El Paso County.

SECTION 2.13. RECORDS. (a) The district shall keep at its principal office:

- (1) complete and accurate accounts of its business transactions in accordance with generally accepted methods of accounting;
- (2) complete and accurate minutes of its meetings; and
- (3) its contracts, documents, and other records.

(b) The district shall permit reasonable public inspection of its records during regular business hours.

SECTION 2.14. SUIT. The district may sue and be sued in its corporate name.

ARTICLE 3. POWERS AND DUTIES

SECTION 3.01. POWERS AND DUTIES. (a) The district shall:

- (1) administer and enforce the terms of this Act;
- (2) use its facilities and powers to accomplish the purposes of this Act;
- (3) coordinate the provision of water, wastewater, and drainage services; and
- (4) control and abate water pollution within the district.

(b) In designing utility infrastructure and related systems, the district shall submit for review to any municipal corporation with a population in excess of 300,000 according to the most recent federal census, provided the corporate boundary of such municipal corporation is contiguous to the district, its design plans and specifications for the utility infrastructure and related systems. In connection with the submission, the district shall pay to the municipal corporation the fee for review, if any, which has been established by municipal ordinance and has general application for reviews of this type, and the municipal corporation shall complete its review of the design plans and specifications within 60 days after their delivery. In connection with the construction of its utility infrastructure, the district shall meet or exceed the construction standards with regard to materials and installation specifications of any municipal corporation with a population in excess of 300,000 according to the most recent federal census, provided the corporate boundary of such municipal corporation is contiguous to the district.

(c) Subject only to the authority of the Texas Natural Resource Conservation Commission, the district has the authority to control and

abate water pollution within the district. Such authority of the district will neither reduce nor eliminate the authority of a municipal corporation to control and abate water pollution within the district under applicable state or federal law.

(d) Except as expressly limited by this Act, the district shall have all of the powers, rights, and privileges necessary and convenient for accomplishing the purposes of this Act conferred by general law on any municipal utility district or water control and improvement district created under Section 59, Article XVI, Texas Constitution.

(e) The powers granted to the district in this Act are cumulative of all powers granted by other law.

SECTION 3.02. DISTRICT RULES. (a) The district may adopt and enforce rules reasonably required to implement this Act, including rules governing procedure and practice before the board.

(b) The district shall print its rules and furnish copies of the rules to any person on written request.

SECTION 3.03. INSPECTIONS AND INVESTIGATIONS. In addition to the powers conferred on it under Section 54.216, Water Code, the district may enter public or private property in the district for the purpose of inspecting and investigating conditions relating to its authorized purposes under the same provisions and restrictions applicable to the Texas Natural Resource Conservation Commission.

SECTION 3.04. HEARINGS AND ORDERS. (a) The board may:

(1) hold hearings, receive evidence from any party in interest who appears before the board, compel the attendance of witnesses, and make findings of fact and determinations with respect to administering this Act or any order or rule of the district; and

(2) delegate to one or more of its members or employees the authority to take testimony and administer oaths in any hearing held or authorized to be held by the district.

(b) An order of the board must be:

(1) in the district's name; and

(2) attested by proper members of the board under the district's rules.

SECTION 3.05. CIVIL PENALTY; INJUNCTION. (a) A person who violates a rule, permit, or order of the district is subject to a civil penalty of not less than \$50 and not more than \$1,000 for each violation or each day of a continuing violation.

(b) The district may sue to enjoin a threatened or present activity or to recover the penalty in a district court in the county where the violation occurred. The penalty shall be paid to the district.

SECTION 3.06. PERMITS; CONTRACTS; COOPERATIVE AGREEMENTS. (a) The district is authorized to acquire water appropriation permits, construction permits, and other water and wastewater discharge permits directly from the Texas Natural Resource Conservation Commission or from owners of permits. The district is also authorized to acquire water or a water supply from any person, firm, corporation,

municipal corporation, public agency, the State of Texas, or the United States government or any of its agencies. The district may, within the discretion of its board, contract with one or more substantial users of water to acquire such water supply under an agreed allocation of storage space between the district and the user or may contract independently for the district's water supply. The district is authorized to collect, transport, process, dispose of, and control all domestic, industrial, or communal wastes, whether in fluid, solid, or composite state. The district is authorized to contract with any person, firm, corporation, municipal corporation, public agency, the State of Texas, or the United States government or any of its agencies for the collection, transportation, processing, disposition, and control of all domestic, industrial, or communal wastes. Such contracting authority includes the authority to enter into coordinated infrastructure plans or regional utility plans.

(b) The district is authorized to enter into contracts with the State of Texas, cities and districts organized pursuant to Section 59, Article XVI, Texas Constitution, and others for supplying water or providing services pertaining to domestic, industrial, or commercial wastes. The district is also authorized to contract with any city, district, or other person for the rental or leasing of or for the operation of the water production, water supply, water filtration or purification, and water supply facilities and facilities for providing services pertaining to the wastes of the city, the district, or other person for such consideration as the district and the city, the district, or other person may agree on. Any such contract may be on such terms and for such time as the parties may agree, and it may provide that it shall continue in effect until bonds or notes specified therein and refunding bonds issued in lieu of such bonds or notes are paid. All such cities and districts are authorized to enter into such contracts with the district to fix, charge, and collect fees, rates, charges, rentals, and other amounts for any service or facilities provided pursuant to or in connection with any contract with this district and to pledge such amounts sufficient to make all payments required under the contract.

(c) With regard to land use planning, the district shall encourage owners and developers of land within the district to use and develop their land and buildings in a manner consistent with building codes, housing codes, fire codes, subdivision regulations, zoning regulations, thoroughfare plans, water conservation plans, land use plans, and other land development and safety regulations of each adjacent municipal corporation with a population in excess of 300,000 according to the most recent federal census.

SECTION 3.07. FACILITIES. In addition to authority conferred on it under Sections 54.201 and 54.211, Water Code, the district is authorized to purchase, construct, acquire, own, lease, operate, maintain, repair, improve, and extend, at any location inside or outside its boundaries, in the sole discretion of the district, land and any interest in land, any and all works, improvements, facilities, plants, equipment, and appliances incident, helpful, or necessary to provide for: (1) the control, storage, preservation, transmission, treatment, and distribution and use of storm

water and floodwater, the water of rivers and streams, and underground water, for municipal, domestic, industrial, and other beneficial uses; and (2) the collection, transportation, processing, disposition, and control of domestic, industrial, or commercial wastes. The district shall have the authority to enter into any contract with any person, firm, corporation, city, district, municipal corporation, public agency, or other political subdivision and to perform any other act consistent with the powers herein granted to carry out any such power.

SECTION 3.08. ACQUISITION AND DISPOSITION OF PROPERTY.

The district is authorized to use any public roadway, street, alley, or easement in El Paso County to accomplish its purposes, without the necessity of securing a franchise or other governmental agreement, provided that, with regard to the use of public roadways, streets, alleys, or easements which belong to an adjacent municipal corporation with a population in excess of 300,000 according to the most recent federal census, the district shall obtain the written consent of the municipal corporation prior to use thereof, and, with regard to the use of any roadway, street, alley, or easement to which such a municipal corporation has exclusive rights, district use shall be subject to payment of a fee equal to the lesser of the district's pro rata share, based on actual area encumbered, of the fair market value of or the initial purchase price for such roadway, street, alley, or easement.

SECTION 3.09. RELOCATION OF FACILITIES. In the event that the district in the exercise of its powers makes necessary the relocation, raising, rerouting, or changing the grade of or altering the construction of any highway, railroad, electric transmission line, pipeline, canal, or drainage ditch, all such necessary relocation, raising, rerouting, changing of grade, or alteration of construction shall be accomplished at the sole expense of the district unless otherwise agreed on in writing by interested parties; however, in the case of replacement, the cost of such action shall be limited to the comparable replacement of any replaced facility, less the replaced facility's net salvage value.

ARTICLE 4. GENERAL FISCAL PROVISIONS

SECTION 4.01. DISBURSEMENT OF MONEY. The district may disburse money only by check, draft, order, or other instrument signed by the person or persons authorized in the board's bylaws or by board resolution.

SECTION 4.02. FEES AND CHARGES. The district may establish fees and charges not to exceed the amounts necessary to enable the district to fulfill the obligations imposed on it by this Act.

SECTION 4.03. LOANS AND GRANTS. The district may apply for and receive loans and grants from the federal or the state government or any agencies thereof, or from a private source, for the purpose of carrying out one or more of its powers. The district may enter into any agreement in connection with a loan or grant that does not conflict with federal or state law.

SECTION 4.04. FISCAL YEAR. The board shall establish the district's fiscal year.

SECTION 4.05. DEPOSITORY BANKS. (a) The board shall designate one or more banks to serve as depository or depositories for the funds of the district. Subject to Section 54.307, Water Code, all funds of the district shall be deposited in the depository bank or banks.

(b) Before designating a depository bank, the board shall publish notice at least once in a newspaper of general circulation in the district requesting applications from banks interested in serving as a depository. The notice shall include the time and location of the board meeting at which the board proposes to designate a depository bank. The board shall prescribe the term of service of a depository bank.

(c) At the time stated in the notice required by Subsection (b) of this section, the board shall consider the applications received and the management and condition of each bank that files an application. The board may designate as a depository the bank or banks that offer the most favorable terms and conditions for the handling of the district's money and that have proper management and the ability to handle the district's money properly. Membership of an officer or director of a bank on the board of the district does not disqualify the bank from being designated as a depository. Service as an officer or director of a bank does not disqualify the officer or director of the bank from membership on the board of the district.

(d) If no application is received by the time stated in the notice, the board may designate a bank or banks on such terms and conditions as the board considers prudent.

ARTICLE 5. BOND AND TAX PROVISIONS

SECTION 5.01. TAX; REVENUE BONDS. (a) For the purpose of carrying out any power or authority conferred by this Act, the district may issue its bonds or other obligations in three general classes:

- (1) secured by ad valorem taxes;
- (2) secured by a pledge of all or part of the revenues accruing to the district, including without limitation those received from sale of water or other products, rendition of service, tolls, charges, and all other sources other than ad valorem taxes; and
- (3) secured by a combination pledge of all or part of the revenues described in Subdivision (2) of this subsection and taxes.

(b) The obligations shall be authorized by resolution of the board and shall be issued in the name of the district, shall be signed by the president or any vice president, shall be attested to by the secretary, and shall bear the seal of the district. If authorized by the board, the signatures of the president or any vice president and of the secretary, or of both, may be printed or lithographed on the obligations, and the seal of the district may be impressed on the obligations or may be printed or lithographed on the obligations. The obligations shall be in the form prescribed by the board, shall be in any denomination or denominations, shall mature serially or otherwise in not to exceed 50 years from their date, shall bear any interest, may be sold at a price and under terms determined by the board to be the most advantageous reasonably obtainable, may be made callable prior to

maturity, at the discretion of the board, at the times and prices prescribed in the obligations, and may be made registrable as to principal or as to both principal and interest. The obligations may be further secured by an indenture of trust with a corporate trustee.

(c) Obligations may be issued in more than one series and from time to time, as required for carrying out the purposes of this Act. Any pledge of revenue may reserve the right, under conditions therein specified, to issue additional obligations which will be on a parity with or subordinate to the obligations then being issued.

(d) The district is an "issuer" for the purpose of definitions in Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717q, Vernon's Texas Civil Statutes).

(e) The resolution authorizing the obligations or the trust indenture further securing the obligations may specify additional provisions which shall constitute a contract between the district and the owners of the obligations. The board shall have full discretion in providing for the additional provisions, including the authority to provide for a corporate trustee or receiver to take possession of facilities of the district in the event of default on the part of the district in fulfilling the covenants therein made.

(f) The district shall not issue bonds secured by or otherwise encumber permanent school fund land contained within the boundaries of the district.

SECTION 5.02. BOND ANTICIPATION NOTES. The district may issue bond anticipation notes from time to time for the purpose of carrying out any one or more of its powers. Such bond anticipation notes may or may not be secured by a pledge of all or part of the revenues of the district. The district may from time to time authorize the issuance of bonds for the purpose of providing proceeds to pay the principal of and interest on bond anticipation notes. Such bonds shall be secured by a pledge of all or part of the revenues of the district and may be issued on a parity with or subordinate to outstanding bonds of the issuer. If the resolution or trust agreement authorizing the issuance of bond anticipation notes contains a covenant to the effect that such notes shall be payable from the proceeds of the subsequently issued bonds, it shall not be necessary to demonstrate for the purposes of receiving the approval of the attorney general or registration by the comptroller that the revenues that may be pledged to such notes will be sufficient to pay the principal of and interest on the notes.

SECTION 5.03. REFUNDING BONDS. (a) The district may issue refunding bonds to refund outstanding bonds and interest authorized by this Act.

(b) Refunding bonds may:

- (1) be issued to refund one or more series of outstanding bonds;
- (2) combine the pledges for the outstanding bonds for the security of the refunding bonds; or
- (3) be secured by other or additional revenues.

(c) The refunding bonds may be issued without having been authorized at an election. The provisions of this Act applicable to the district's issuance of other bonds, their security, their approval by the attorney general, and the remedies of the holders are applicable to refunding bonds.

(d) Refunding bonds shall be registered by the comptroller on surrender and cancellation of the bonds to be refunded. Alternatively, the resolution authorizing the issuance of refunding bonds may provide that the bonds shall be sold and the resulting proceeds deposited in the bank where the bonds to be refunded are payable, in which case the refunding bonds may be issued in an amount sufficient to pay the principal and interest of the bonds to be refunded to their option or maturity date. The comptroller shall register the refunding bonds without concurrent surrender and cancellation of the bonds to be refunded.

SECTION 5.04. APPROVAL AND REGISTRATION OF BONDS. District bond review and approval shall be governed by the provisions of Subchapter F, Chapter 54, Water Code.

SECTION 5.05. TAXATION. (a) Except for land owned by the permanent school fund, the board may levy and collect ad valorem taxes for the maintenance of the district and its improvements or for administrative expenses of the district, or for both purposes, in such amounts as are voted in accordance with this Act.

(b) The maintenance tax and administration tax shall not exceed the maximum rate voted, and the authorized rate shall remain in effect unless changed by subsequent vote.

SECTION 5.06. BONDS ARE AUTHORIZED INVESTMENTS. All bonds and notes of the district shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, savings and loan associations, insurance companies, fiduciaries, trustees, and guardians and for the sinking funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas. Such bonds and notes shall be eligible to secure the deposit of any and all public funds of the State of Texas and any and all public funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas; and such bonds shall be lawful and sufficient security for the deposits to the extent of their value.

SECTION 5.07. PROPERTY: RENDITION; VALUATION; LEVY. (a) The rendition and assessment of property for taxation, the equalization of values, and the collection of taxes for the benefit of the district shall be in accordance with the law applicable to counties, insofar as such law can be made applicable, and except as hereinafter specifically provided.

(b) The tax assessor-collector of each county shall act as the tax assessor-collector for the district for property in the district located in such county. It shall be the duty of the tax assessor-collector in each county to cause to be placed on the county tax rolls the additional column or columns needed to show the taxes levied by the district and the amount thereof, based on the value of the property as approved and equalized. The fee of each county tax assessor-collector for assessing and collecting

taxes shall be one percent of the taxes collected, to be paid over and disbursed in each county as are other fees of office.

(c) All the legal means available for the enforcement of state and county taxes shall be available to the district. The district shall have the right to cause the officers of each county to enforce and collect the taxes due to the district in that county as provided in the law for the enforcement of state and county taxes.

(d) Taxes assessed and levied for the benefit of the district shall be payable and shall become delinquent at the same time, in the same manner, and subject to the same discount for advance payment as taxes levied by and for the benefit of the county in which the property is taxable. The fee for collecting delinquent taxes through prosecution of suit shall be 15 percent of the taxes collected by the suit, to be paid over and disbursed in each county as are other fees of office.

(e) Concurrently with the levy of county taxes by the commissioners courts, the board shall levy the tax on all taxable property in the district which is subject to such taxation and shall immediately certify the tax rate to the tax assessor-collector of each county which lies inside the district.

ARTICLE 6. ADDITION OF LAND TO DISTRICT

SECTION 6.01. ANNEXATION. Notwithstanding any other provision of law, other territory may be included in the district as provided in Sections 6.02, 6.03, and 6.04 of this Act.

SECTION 6.02. PETITION. (a) The owner or owners of land contiguous to the district or otherwise may file with the board a petition requesting that there be included in the district the land described in the petition by metes and bounds or by lot and block number if there is a recorded plat of the area to be included in the district.

(b) The petition of the landowner or landowners to add land to the district shall be signed and executed in the manner provided by law for the conveyance of real estate.

(c) The board shall hear and consider the petition and may add to the district the land described in the petition if it is considered to be to the advantage of the district and if the water system and other improvements of the district are sufficient or will be sufficient to supply the added land without injuring land already in the district.

SECTION 6.03. NOTICE AND HEARING. (a) A petition requesting the annexation of a defined area shall be filed with the secretary of the board and shall be signed by a majority in value of the owners of land in the defined area, as shown by the tax rolls of the county or counties in which such area is located, or signed by 50 landowners, if the number of landowners in the defined area is more than 50.

(b) It shall be the duty of the board to pass an order fixing a time and place at which the petition for annexation shall be heard, which shall not be less than 15 days from the day of the order calling the hearing.

(c) The secretary shall issue a notice setting forth the time and place of the hearing and describing the area proposed to be annexed. Notice of the hearing shall be given by posting copies of the notice in three public places in the district and in one public place in the area proposed to be

annexed for at least seven days before the day of the hearing and by publishing a copy of the notice in a newspaper of general circulation in the county or counties in which the area proposed to be annexed is located one time at least seven days before the day of the hearing.

(d) If on the hearing of the petition it is found by the board that the proposed annexation of the area to the district is feasible and practicable and would be of benefit both to the area and to the district, the board, by order entered in its minutes describing the area to be annexed, may receive the proposed area as an addition to and part of the district. The order adding the proposed territory to the district need not include all of the land described in the petition, if on the hearing a modification or change is found necessary or desirable by the board.

SECTION 6.04. ANNEXATION ORDER. (a) A copy of the order adding or annexing land to the district, signed by a majority of the members of the board and attested to by the secretary of the board, shall be filed and recorded in the deed records of the county or counties in which the district is located if the land is finally annexed to the district.

(b) After the order is recorded, the area shall be a part of the district.

ARTICLE 7. EXCLUSION OF LAND FROM DISTRICT

SECTION 7.01. PETITION. (a) Notwithstanding any other provision of law, the board, provided there is no outstanding board order regarding an election for the authorization of bonds payable in whole or in part from taxes and/or provided the district does not have any outstanding indebtedness secured by taxes or net revenues of the district, may call a hearing on exclusion of land from the district by petition of a landowner or on motion of the board of directors.

(b) A petition for exclusion of land must accurately describe the land to be excluded by metes and bounds or by reference to a plat recorded in the plat records of the county or counties in which the land is located. The petition must be signed by the owner or owners of the land to be excluded, by at least 10 percent of the owners of land to be excluded, or by five or more of the owners of land to be excluded if the number of owners is more than 50, must be filed with the district at least 7 days before the hearing on the petition for exclusion, and shall clearly state the particular grounds on which exclusion is sought. Only the ground stated in the petition shall be considered.

SECTION 7.02. NOTICE AND HEARING. (a) A hearing shall be held on any petition for exclusion, but shall not be required for exclusion by motion of the board.

(b) Notice of hearing shall be published by the board once a week for two consecutive weeks in one or more newspapers of general circulation in the district. The first publication shall appear at least 14 days and not more than 40 days before the date of the hearing.

(c) Before determining to exclude any land, the board shall find that the district has no obligations that will be impaired by the exclusion of the land, that the district will incur no obligations because of the exclusion, and that the exclusion is in the best interests of the district.

(d) After considering all engineering data and other evidence presented to it, if the board makes the findings set forth in Subsection (c) of this

section, the board shall enter an order excluding all land meeting the conditions and shall redefine the boundaries of the district in order to embrace all land not excluded. If the land to be excluded contains water or wastewater customers of the district, such customers shall remain customers of the district, and owners of lots to which water and wastewater facilities have already been extended shall also be allowed to connect to the district's system and shall be customers of the district.

SECTION 7.03. EFFECTIVE DATE OF ORDER EXCLUDING LAND.

(a) Except as provided by Subsection (c) of this section, an order excluding land pursuant to a petition signed by the owner or owners of the land to be excluded takes effect on the date the board enters the order.

(b) Except as provided by Subsection (c) of this section, an order excluding land pursuant to a petition signed by less than all of the owners to be excluded takes effect:

(1) on the day following the deadline for submission of a petition if the district does not receive a timely petition under Subsection (b) of Section 7.04 of this Act; or

(2) on the day following the day the election returns are canvassed if the district receives a timely petition under Subsection (b) of Section 7.04 of this Act and the exclusion is ratified at an election held for that purpose.

(c) Before an order excluding land under this section becomes effective, all taxes levied and assessed by the district on the land to be excluded shall be fully paid.

SECTION 7.04. PETITION FOR RATIFICATION ELECTION. (a) If the board issues an order excluding land pursuant to a petition signed by less than all of the owners of the land to be excluded, the board shall publish notice describing the excluded land and stating that the exclusion becomes final if the district does not receive, not later than 25 days after the date of the board's order, a petition requesting a ratification election that is signed by at least 10 percent of the qualified voters that reside in the area to be excluded.

(b) If the district receives, not later than 25 days after the date of the board's order, a petition requesting a ratification election that is signed by at least 10 percent of the qualified voters that reside in the land area to be excluded, the order does not take effect unless approved by a majority vote of the residents of the district at a ratification election held for that purpose.

(c) The notice of the election, the manner and time of giving the notice, the manner of holding the election, and qualifications of the voters shall be governed by Subchapter E, Chapter 51, Water Code.

ARTICLE 8. DIVISION OF DISTRICT

SECTION 8.01. CONDITIONS OF DIVISION. (a) The district may from time to time, provided it does not have any outstanding indebtedness secured by taxes or net revenues, divide into two or more districts; however, no division shall occur that would result in the creation of a

district of less than 100 acres in size. On petition of any landowner or on the board's own motion, the board of directors may consider a proposal to divide the original district or any district subsequently created by division.

(b) With regard to the foregoing authority to divide the district into one or more districts, it is not the intent of this Act to encourage or promote the proliferation of numerous utility providers within the subject territory. Rather, this Act is intended to encourage and promote orderly development within the subject territory and to facilitate the provision of dependable, efficient utility services at affordable rates to customers of the district.

SECTION 8.02. ELECTION; AUTHORITY OF NEW DISTRICTS.

(a) After the board of the original district has agreed on the terms and conditions of division, which shall include a plan for the payment of any outstanding current obligations and performance of any outstanding obligations of the original district, and has prepared a metes and bounds description of the proposed districts, it shall order an election to be held in the district to determine whether the original district should be divided as proposed.

(b) The board of the original district shall be divided if a majority of the qualified voters in the original district vote in favor of the division. The resulting districts shall be designated by consecutive letters following the number of the original district. For example, Paseo del Este No. 1, if divided into two districts, shall become Paseo del Este No. 1A and Paseo del Este No. 1B. Each resulting district, in order to issue bonds payable wholly or partially from ad valorem taxes, shall be required to obtain authorization for the issuance of the bonds by a majority vote of the qualified voters of the district voting in an election called and held for that purpose. Notice of the election shall be given as generally set forth for bond elections in Chapter 54, Water Code. Each resulting district desiring to levy a maintenance tax shall be required to obtain authorization for the tax by a majority vote of the qualified voters of the district voting in an election called and held for that purpose. Notice of the election shall be given as generally set forth for such elections in Chapter 54, Water Code.

SECTION 8.03. APPOINTMENT AND ELECTION OF DIRECTORS.

(a) After the district is divided into two or more districts, the resulting districts shall be separate districts and shall be governed as separate districts, provided that, during a period of 90 days after the date of the election to approve division, the board of the original district shall continue to act on behalf of the original district to wind up its affairs. The board of the original district shall appoint two initial directors to each resulting district to serve terms expiring September 1 of the second year after the creation of each resulting district, and the board of the original district shall appoint three initial directors to each resulting district to serve terms expiring September 1 of the fourth year after creation of each resulting district. A board member of the original district may be appointed as a director of one of the resulting districts. In any election

held to confirm the creation of the district and appointment of initial directors, Section 2.04 of this Act applies.

(b) If an initial director dies, resigns, or is otherwise removed, the board of the new district shall appoint a successor to serve the unexpired term. When a director's term expires, his successor shall be elected as provided in Section 2.04 of this Act.

SECTION 8.04. PAYMENT OF DISTRICT DEBTS. After the division of the original district into two or more districts, the current obligations and any bond authorizations of the original district are protected and are not impaired. The debts may be paid by taxes, revenues, or assessments levied on the land in the original district as if it had not divided or with contributions from each of the resulting districts on terms stated in the division proposed by the board and approved by the election under Section 8.02 of this Act.

SECTION 8.05. AUTHORITY OF RESULTING DISTRICTS. After division, each of the resulting districts shall have the power to incur and pay debts created by each district and shall in every respect have the full power and authority of a district created and governed by the provisions of this Act. Each of the resulting districts shall have the authority to contract with one another for the provision of water and wastewater services and for such other matters as the board of directors of each of the districts deems appropriate.

SECTION 8.06. ASSUMPTION OF OBLIGATIONS. After division, each of the resulting districts shall assume the obligations of the original district under any agreements or resolutions consenting to the creation of the original district to the extent that such agreements and resolutions do not impose obligations that limit the district's powers and authority to issue bonds for any purpose authorized by this Act. Any other obligations of the original district shall be divided pro rata among the resulting districts either on an acreage basis or on such other terms as are satisfactory to the resulting districts.

SECTION 8.07. NOTICE TO TEXAS NATURAL RESOURCE CONSERVATION COMMISSION. Within 30 days after a division election, the original district that confirms a plan for division shall provide written notice of such plan to the Texas Natural Resource Conservation Commission.

ARTICLE 9. ANNEXATION AND DISSOLUTION OF DISTRICT

SECTION 9.01. ANNEXATION. (a) Notwithstanding any other provision of law, on the annexation of the district or districts, in the event of division under Article 8 of this Act, the annexing municipality shall:

- (1) assume all of the outstanding indebtedness of the district;
- (2) dissolve the district within six months of annexation and become the owner of all district assets, including, without limitation, all accounts receivable and the right to collect all outstanding taxes, delinquent taxes, and other indebtedness;
- (3) refrain from imposing city taxes on property located within the district at any time prior to dissolution of the district;

(4) provide all city utility, emergency medical, fire, police, garbage collection, and other standard municipal services to residents of the district at the same rate as such services are provided to in-city residents of similar developments; and

(5) with regard to zoning and other land use regulation, honor regional land use planning within the district.

(b) Notwithstanding Subsection (a)(4) of this section, the annexing municipality may, following annexation and dissolution of the district, impose water supply fees, impact fees, and other assessments allowed by state law on property previously located within the district, provided that the annexing municipality shall not impose any such fee or assessment on property which had received a utility service allocation by the district or property for which site development has been authorized or on which site development has commenced.

(c) Immediately on annexation of the district, the district shall transfer all district assets to the annexing municipal corporation in accordance with the instruments approved by the annexing municipal corporation and the district.

ARTICLE 10. AFFORDABLE HOUSING

SECTION 10.01. A minimum of five percent of the residential housing units within the district shall be utilized for the construction of affordable housing, such affordable housing to be distributed among different residential areas within the district. In this section, "affordable housing" means housing available to those with low, or very low income levels, as those levels are determined periodically by the United States Department of Housing and Urban Development based on the El Paso Standard Metropolitan Statistical Area.

ARTICLE 11. MISCELLANEOUS PROVISIONS

SECTION 11.01. NO TAXATION. The accomplishment of the purposes stated in this Act being for the benefit of the people of this state and for the improvement of their properties and industries, the district in carrying out the purposes of this Act will be performing an essential public function under the constitution and shall not be required to pay any tax or assessment on the project or any part thereof, and the bonds or notes issued under this Act and their transfer and the income therefrom, including the profits made on the sale thereof, shall at all times be free from taxation within this state.

SECTION 11.02. FINDINGS RELATING TO PROCEDURAL REQUIREMENTS. The proper and legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished by the constitution and other laws of this state, including the governor. All requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act are fulfilled and accomplished.

SECTION 11.03. SEVERABILITY. If any word, phrase, clause, sentence, paragraph, section, or other part of this Act or the application thereof to any person or circumstance shall ever be held to be invalid or unconstitutional by a court of competent jurisdiction in this state, the remainder of the Act and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this Act to other persons or circumstances shall not be affected thereby. To the extent of a conflict between a provision of this Act and any other law or statute, this Act shall control.

SECTION 11.04. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE
SENATE BILL 1663 ON THIRD READING**

Senator Rosson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.S.B. 1663** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

SENATE BILL 1514 ON SECOND READING

On motion of Senator Cain and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 1514, Relating to the inclusion of the services of licensed psychological associates in health insurance coverage.

The bill was read second time and was passed to engrossment by a viva voce vote.

SENATE BILL 1514 ON THIRD READING

Senator Cain moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **S.B. 1514** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE
SENATE BILL 411 ON SECOND READING**

On motion of Senator Montford and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 411, Relating to the protection of a public employee who reports a violation of law.

The bill was read second time.

Senator Rosson offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.S.B. 411** as follows:

By striking the word "\$5,000" on page 3, line 42 of the committee report, and inserting in its place the word "\$15,000".

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE
SENATE BILL 411 ON THIRD READING**

Senator Montford moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.S.B. 411** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

SENATE BILL 1248 ON SECOND READING

On motion of Senator Montford and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 1248, Relating to the salaries of certain justices and judges.

The bill was read second time.

Senator Ellis offered the following amendment to the bill:

Floor Amendment No. 1

Amend **S.B. 1248** as follows:

(1) In Section 659.012(a), Government Code (committee printing, page 1, line 16), strike "66.82145" and substitute "70.16231".

(2) Strike SECTION 2 of the bill and substitute the following:

SECTION 2. This Act takes effect January 1, 1996, but only if **S.B. 313**, Acts of the 74th Legislature, Regular Session, 1995, takes effect. If **S.B. 313** does not take effect, this Act has no effect.

SECTION 3. Section 814.103(a), Government Code, is amended to read as follows:

(a) Except as provided by Subsection (b), the standard service retirement annuity for service credited in the elected class of membership is an amount computed by subtracting \$4,261 from [equal to the number of years of service credit in that class, times] two percent of the state salary, as adjusted from time to time, being paid a district judge and multiplying the result by the number of years of service credit in the elected class.

SECTION 4. Section 814.103, Government Code, as amended by this Act, applies only to payment of annuities that become due on or after the effective date of this Act. A payment of an annuity that became due before the effective date of this Act is governed by Section 814.103, Government Code, as it existed at the time the payment became due, and the former law is continued in effect for this purpose.

(3) Renumber existing SECTION 3 of the bill as SECTION 5.

The amendment was read and was adopted by the following vote: Yeas 15, Nays 13.

Yeas: Cain, Ellis, Gallegos, Lucio, Madla, Moncrief, Montford, Nixon, Rosson, Sims, Truan, Turner, West, Whitmire, Zaffirini.

Nays: Barrientos, Bivins, Brown, Galloway, Harris, Haywood, Henderson, Leedom, Patterson, Ratliff, Shapiro, Sibley, Wentworth.

Absent: Armbrister, Luna, Nelson.

The bill as amended was passed to engrossment by a viva voce vote.

MOTION TO PLACE SENATE BILL 1248 ON THIRD READING

Senator Montford moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **S.B. 1248** be placed on its third reading and final passage.

The motion was lost by the following vote: Yeas 17, Nays 12. (Not receiving four-fifths vote of Members present)

Yeas: Barrientos, Cain, Ellis, Gallegos, Lucio, Luna, Madla, Moncrief, Montford, Nixon, Rosson, Sims, Truan, Turner, West, Whitmire, Zaffirini.

Nays: Bivins, Brown, Galloway, Harris, Haywood, Henderson, Leedom, Patterson, Ratliff, Shapiro, Sibley, Wentworth.

Absent: Armbrister, Nelson.

MOTION TO PLACE SENATE BILL 1677 ON SECOND READING

Senator Barrientos asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

S.B. 1677, Relating to studying the feasibility of constructing a motion-picture soundstage facility on state-owned property in certain counties and authorizing the construction if it is feasible; making an appropriation.

There was objection.

Senator Barrientos then moved to suspend the regular order of business and take up **S.B. 1677** for consideration at this time.

The motion was lost by the following vote: Yeas 17, Nays 12. (Not receiving two-thirds vote of Members present)

Yeas: Barrientos, Bivins, Ellis, Gallegos, Lucio, Luna, Madla, Moncrief, Montford, Nixon, Rosson, Truan, Turner, Wentworth, West, Whitmire, Zaffirini.

Nays: Brown, Cain, Galloway, Harris, Haywood, Henderson, Leedom, Nelson, Patterson, Ratliff, Shapiro, Sibley.

Absent: Armbrister, Sims.

GUEST PRESENTED

Senator Brown was recognized and introduced to the Senate David Ross, Director of the Federal Office of Child Support Enforcement.

The Senate welcomed its guest.

CAPITOL PHYSICIAN

Senator Turner, on behalf of Senator Armbrister, was recognized and presented Dr. F. L. Merian of Victoria as the "Doctor for the Day."

The Senate welcomed Dr. Merian and thanked him for his participation in the "Capitol Physician" program sponsored by the Texas Academy of Family Physicians.

SENATE CONCURRENT RESOLUTION 145

Senator Gallegos offered the following resolution:

S.C.R. 145, Designating Tuesday, May 9, 1995, Clinical Nutrition Day in Texas.

The resolution was read.

On motion of Senator Gallegos and by unanimous consent, the resolution was considered immediately and was adopted by a viva voce vote.

GUESTS PRESENTED

Senator Gallegos was recognized and introduced to the Senate a delegation of members of the Texas State Association of Clinical Nutritionists.

The Senate welcomed its guests.

HOUSE BILL 1877 ON SECOND READING

On motion of Senator Montford and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1877, Relating to the authority of the board of regents of The University of Texas System to delegate certain powers and duties of the board.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 1877 ON THIRD READING

Senator Montford moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 1877** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**MOTION TO PLACE
COMMITTEE SUBSTITUTE
SENATE BILL 1372 ON SECOND READING**

Senator Wentworth asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

C.S.S.B. 1372, Relating to authorizing counties to enact ordinances in certain circumstances to protect the public health, safety, or welfare; providing a penalty.

There was objection.

Senator Wentworth then moved to suspend the regular order of business and take up **C.S.S.B. 1372** for consideration at this time.

The motion was lost by the following vote: Yeas 16, Nays 12. (Not receiving two-thirds vote of Members present)

Yeas: Cain, Ellis, Gallegos, Galloway, Haywood, Henderson, Moncrief, Montford, Patterson, Rosson, Sims, Truan, Wentworth, West, Whitmire, Zaffirini.

Nays: Barrientos, Bivins, Brown, Harris, Leedom, Lucio, Madla, Nixon, Ratliff, Shapiro, Sibley, Turner.

Absent: Armbrister, Luna, Nelson.

BILLS AND RESOLUTIONS SIGNED

The Presiding Officer announced the signing of the following enrolled bills and resolutions in the presence of the Senate after the captions had been read:

S.C.R. 126	S.B. 424	S.B. 1241
S.C.R. 132	S.B. 694	S.B. 1281
S.C.R. 141	S.B. 717	S.B. 1284
H.C.R. 96	S.B. 731	S.B. 1299
H.C.R. 97	S.B. 875	S.B. 1327

S.B. 31	S.B. 934	S.B. 1328
S.B. 32	S.B. 1018	S.B. 1387
S.B. 297	S.B. 1032	S.B. 1627
S.B. 365		

HOUSE BILL 984 ON SECOND READING

On motion of Senator West and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 984, Relating to the filing of a conduct surety bond by certain alcoholic beverage permit or license holders.

The bill was read second time.

Senator West offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **H.B. 984** by deleting the following:

In SECTION 1. of the bill, Section 11.11(a), Alcoholic Beverage Code: "or \$10,000 if the applicant for a permit or holder of a permit has a business located within 1,000 feet of the property line of a public school."

And in SECTION 2. of the bill, Section 61.13(a), Alcoholic Beverage Code:

"or \$10,000 if the applicant for a license or holder of a license has a business located within 1,000 feet of the property line of a public school."

The committee amendment was read.

On motion of Senator West and by unanimous consent, Committee Amendment No. 1 was tabled by a viva voce vote.

Senator West offered the following amendment to the bill:

Floor Amendment No. 1

Amend **H.B. 984** by adding the following:

In SECTION 1. of the bill, Section 11.11(a), Alcoholic Beverage Code, after the word "Chapter" and before "25" insert "22, 24", and after "25" and before "28", insert "26".

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 984 ON THIRD READING

Senator West moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 984** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

GUESTS PRESENTED

Senator Brown was recognized and introduced to the Senate a group of exchange students from Poland: Marek Lowandowski, Marian Marczewski, Lucyna Hanna Pietrzyk, and Gwidon Wejcik.

The Senate welcomed its guests.

**COMMITTEE SUBSTITUTE
SENATE BILL 1683 ON SECOND READING**

On motion of Senator Nixon and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 1683, Relating to the collection, management, and recycling of used oil and used oil filters; providing penalties.

The bill was read second time.

Senator Nixon offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.S.B. 1683** as follows:

(1) In SECTION 3 of the bill, in Section 371.0025, Health and Safety Code, in subsection (a), subdivision (2) (page 3, line 23) between "private" and "do-it-yourselfer" insert "used oil and".

(2) In SECTION 4 of the bill, in Section 371.003, Health and Safety Code, in subsection (1), (page 4, line 16) between "process" and "oil" insert "used".

(3) In SECTION 5 of the bill, in Section 371.024, Health and Safety Code, in subsection (1), (page 14, line 2) strike "biannually" and insert "biennially".

(4) In SECTION 5 of the bill, in Section 371.024, Health and Safety Code, in subsection (1), (page 20, line 5) strike "biannually" and insert "biennially".

(5) In SECTION 5 of the bill, in Section 371.0245, Health and Safety Code, in subsection (b), (page 15, line 10) between "registered" and "do-it-yourselfer" and insert "used oil or".

(6) In SECTION 5 of the bill, in Section 371.0245, Health and Safety Code, in subsection (c), (page 16, line 6) between "registered" and "do-it-yourselfer" and insert "used oil or".

(7) In SECTION 5 of the bill, in Section 371.0245, Health and Safety Code, in subsection (d), (page 16, line 12) between "registered" and "do-it-yourselfer" and insert "used oil or".

(8) In SECTION 5 of the bill, in Section 371.0246, Health and Safety Code, in subsection (a), (page 16, line 20) between "registered" and "do-it-yourselfer" and insert "used oil or".

(9) In SECTION 5 of the bill, in Section 371.025, Health and Safety Code,

(a) In subsection (a), (page 18, line 9) strike "public" and substitute "do-it-yourselfer".

(b) In subsection (b), (page 18, line 21) strike "public" and substitute "do-it-yourselfer".

(c) In subsection (c), (page 19, line 2) strike "public" and substitute "do-it-yourselfer".

The amendment was read and was adopted by a viva voce vote.

Senator Nixon offered the following amendment to the bill:

Floor Amendment No. 2

Amend C.S.S.B. 1683 as follows:

(1) In SECTION 3 of the bill, in Section 371.0025, Health and Safety Code, in subsection (b) (page 4, line 4), strike subdivision (2) and substitute and new subdivision (2) to read as follows:

(2) exempted under 40 CFR Sec. 279.10(g) by reason of having been introduced into crude oil pipelines or being processed at a petroleum refining facility.

(2) In SECTION 4 of the bill, in Section 371.003, Health and Safety Code, in subsection (1), (page 10, line 19) add a new sentence to read as follows:

Transfer facilities that store used oil for more than 35 days are subject to regulation under subpart F of 40 CFR Part 279.

(3) In SECTION 4 of the bill, in Section 371.003, Health and Safety Code, in subsection (26), (page 10, line 21) insert a new subdivision (A), and renumber the subsequent subdivisions as appropriate:

(A) collects used oil from more than one generator and transports the collected used oil;

(4) In SECTION 6 of the bill, in Section 371.041, Health and Safety Code, in subsection (b), (page 22, line 8) after "any" add "used oil regulated by the commission in violation of standards or regulations for management of such used oil; or".

(5) In SECTION 6 of the bill, in Section 371.041, Health and Safety Code, in subsection (b), (page 22, line 10) before "used" add "handles".

The amendment was read and was adopted by a viva voce vote.

Senator Nixon offered the following amendment to the bill:

Floor Amendment No. 3

Amend C.S.S.B. 1683 as follows:

In SECTION 10 of the bill, in Section 371.062, Health and Safety Code, strike subsection (j) and substitute new subsection (j) to read as follows:

(j) The fee imposed under this section is two cents per quart or eight cents per gallon of automotive oil. As of September 1, 1997, the fee shall not exceed one cent per quart or four cents per gallon.

The amendment was read and was adopted by a viva voce vote.

Senator Nixon offered the following amendment to the bill:

Floor Amendment No. 4

Amend **C.S.S.B. 1683** as follows:

(1) In SECTION 3 of the bill, in Section 371.0025, Health and Safety Code (page 3, line 22), in subsection (a), between "279" and ";" insert "unless otherwise required by state or federal law".

(2) In SECTION 5 of the bill, in Section 371.028, Health and Safety Code (page 21, line 18), in subsection (a), strike the last sentence of the section and add a new sentence to read as follows:

Unless otherwise required by applicable state or federal law, the rules, standards, and procedures must be consistent with and no more stringent than the used oil management standards under 40 CFR Part 279.

(3) Add a new SECTION 11 to the bill to read as follows, and renumber the subsequent sections appropriately:

SECTION 11. Subchapter N, Chapter 371, Health and Safety Code, is amended by adding Section 361.432 to read as follows:

Sec. 361.432. USED OIL FILTER MANAGEMENT. (a) Used oil filters shall not be intentionally or knowingly placed in or accepted for disposal in a landfill permitted by the commission.

(b) The commission by rule may:

(1) adopt reasonable standards for the management of used oil filters as defined in Section 371.003, and

(2) encourage the recycling of used oil filters.

The amendment was read and was adopted by a viva voce vote.

Senator Nixon offered the following amendment to the bill:

Floor Amendment No. 5

Amend **C.S.S.B. 1683** as follows:

(1) In SECTION 5 of the bill, in Section 371.023, Health and Safety Code, in subsection (c), (page 13, line 12) between "for grants" and "and recommend" insert ", guidelines for allowable administrative expenditures".

(2) In SECTION 5 of the bill, in Section 371.023, Health and Safety Code, in subsection (d), (page 13, line 19) add a new sentence to read as follows:

The commission by rule shall adopt guidelines for allowable administrative expenditures in accordance with guidelines established by the advisory committee.

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE
SENATE BILL 1683 ON THIRD READING**

Senator Nixon moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.S.B. 1683** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

(President in Chair)

HOUSE BILL 27 ON SECOND READING

Senator Gallegos asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

H.B. 27, Relating to an exemption from continuing education requirements for certain county commissioners.

There was objection.

Senator Gallegos then moved to suspend the regular order of business and take up **H.B. 27** for consideration at this time.

The motion prevailed by the following vote: Yeas 29, Nays 2.

Yeas: Armbrister, Barrientos, Bivins, Brown, Cain, Ellis, Gallegos, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Luna, Madla, Moncrief, Montford, Nelson, Nixon, Patterson, Ratliff, Rosson, Shapiro, Sibley, Truan, Turner, West, Whitmire, Zaffirini.

Nays: Sims, Wentworth.

The bill was read second time and was passed to third reading by a viva voce vote.

RECORD OF VOTES

Senators Armbrister, Bivins, Brown, Cain, Harris, Ratliff, Sibley, Sims, Turner, and Wentworth asked to be recorded as voting "Nay" on the passage of the bill to third reading.

MOTION TO PLACE HOUSE BILL 27 ON THIRD READING

Senator Gallegos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 27** be placed on its third reading and final passage.

The motion was lost by the following vote: Yeas 20, Nays 10. (Not receiving four-fifths vote of Members present)

Yeas: Barrientos, Ellis, Gallegos, Galloway, Haywood, Henderson, Leedom, Lucio, Luna, Madla, Moncrief, Montford, Nixon, Patterson, Rosson, Shapiro, Truan, West, Whitmire, Zaffirini.

Nays: Armbrister, Bivins, Brown, Cain, Harris, Ratliff, Sibley, Sims, Turner, Wentworth.

Absent: Nelson.

SENATE BILL 1693 ON SECOND READING

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 1693, Relating to authorizing the division of the Gonzales County Underground Water Conservation District into precincts, authorizing the board to make expenditures, and validating certain actions.

The bill was read second time and was passed to engrossment by a viva voce vote.

SENATE BILL 1693 ON THIRD READING

Senator Armbrister moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **S.B. 1693** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

COMMITTEE SUBSTITUTE SENATE BILL 317 ON SECOND READING

Senator Armbrister asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

C.S.S.B. 317, Relating to the authority of a municipality to implement a photographic traffic-control system; providing for imposition of civil penalties.

There was objection.

Senator Armbrister then moved to suspend the regular order of business and take up **C.S.S.B. 317** for consideration at this time.

The motion prevailed by the following vote: Yeas 25, Nays 3.

Yeas: Armbrister, Barrientos, Bivins, Brown, Cain, Ellis, Gallegos, Galloway, Harris, Haywood, Leedom, Lucio, Madla, Moncrief, Montford, Nixon, Patterson, Ratliff, Shapiro, Sibley, Sims, Truan, Turner, Whitmire, Zaffirini.

Nays: Henderson, Rosson, West.

Absent: Luna, Nelson, Wentworth.

The bill was read second time and was passed to engrossment by a viva voce vote.

RECORD OF VOTES

Senators Henderson, Rosson, and West asked to be recorded as voting "Nay" on the passage of the bill to engrossment.

COMMITTEE SUBSTITUTE SENATE BILL 317 ON THIRD READING

Senator Armbrister moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.S.B. 317** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 3.

Yeas: Armbrister, Barrientos, Bivins, Brown, Cain, Ellis, Gallegos, Galloway, Harris, Haywood, Leedom, Lucio, Luna, Madla, Moncrief, Montford, Nixon, Patterson, Ratliff, Shapiro, Sibley, Sims, Truan, Turner, Wentworth, Whitmire, Zaffirini.

Nays: Henderson, Rosson, West.

Absent: Nelson.

The bill was read third time and was passed by a viva voce vote.

RECORD OF VOTES

Senators Henderson, Rosson, and West asked to be recorded as voting "Nay" on the final passage of the bill.

GUESTS PRESENTED

Senator Sims was recognized and introduced to the Senate a group of students and their teachers from Lampasas High School.

The Senate welcomed its guests.

SENATE BILL 1525 ON SECOND READING

On motion of Senator Rosson and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 1525, Relating to the acquisition by the Parks and Wildlife Department of real property owned by the permanent school fund.

The bill was read second time.

Senator Rosson offered the following amendment to the bill:

Floor Amendment No. 1

Amend **S.B. 1525** as follows:

Strike all below the enacting clause and insert in lieu thereof the following:

SECTION 1. According to the provisions of this Act, there is hereby transferred to the Texas Parks and Wildlife Department all of the interest of the permanent school fund in the surface and all of the oil, gas, and other minerals, in that portion of the A.G. McMath Survey No. 298 in El Paso County, Texas included within the boundaries of the Franklin Mountains State Park and subject to the provision of Acts 1989, 71st Leg., ch. 383, Sec. 2. There is further transferred to the Texas Parks and Wildlife Department all of the interest of the permanent school fund in all of the oil, gas, and other minerals in the following tracts to the extent that these tracts are included within Franklin Mountains State Park in El Paso County, Texas (as the boundaries of the park are established in Acts 1979, 66th Leg., p. 1805, ch. 736, Sec. 2, as amended by Acts 1981, 67th Leg., p. 3273, ch. 860, Sec. 2 and Acts 1989, 71st Leg., ch. 383, Secs. 1 and 2):

- (A) Clara Mundy Survey No. 251;
- (B) Clara A. Mundy Survey No. 252;
- (C) Clara A. Mundy Survey No. 253;
- (D) J.A. Rogers Survey No. 400;
- (E) W.P. Paschal Survey No. 277;
- (F) A.G. McMath Survey No. 296;
- (G) A.G. McMath Survey No. 297;
- (H) A.G. McMath Survey No. 299;
- (I) A.G. McMath Survey No. 300;
- (J) A.G. McMath Survey No. 301;
- (K) A.G. McMath Survey No. 306;
- (L) H.G. Foster Survey No. 259;
- (M) H.G. Foster Survey No. 260;
- (N) H.G. Foster Survey No. 261;
- (O) A.F. Miller Survey No. 217;
- (P) Lee Moor Survey No. 221;
- (Q) Lee Moor Survey No. 222;
- (R) Eli Nations Survey No. 271;
- (S) Eli Nations Survey No. 272;
- (T) S.J. Larkin Survey No. 268;
- (U) S.J. Larkin Survey No. 269;
- (V) S.J. Larkin Survey No. 270;
- (W) Section 4, Block 81, Township 1, Texas and Pacific Railway Company Survey;
- (X) Section 6, Block 81, Township 1, Texas and Pacific Railway Company Survey;
- (Y) Section 8, Block 81, Township 1, Texas and Pacific Railway Company Survey;
- (Z) Section 16, Block 81, Township 1, Texas and Pacific Railway Company Survey;
- (AA) Section 24, Block 81, Township 1, Texas and Pacific Railway Company Survey;
- (BB) Section 6, Block 81, Township 2, Texas and Pacific Railway Company Survey;
- (CC) Section 14, Block 81, Township 2, Texas and Pacific Railway Company Survey;
- (DD) Section 2, Block 82, Township 1, Texas and Pacific Railway Company Survey;
- (EE) Section 4, Block 82, Township 1, Texas and Pacific Railway Company Survey; and
- (FF) Section 8, Block 82, Township 1, Texas and Pacific Railway Company Survey.

SECTION 2. In compensation to the permanent school fund for the surface and mineral interests transferred to the Texas Parks and Wildlife Department as described in Section 1 of this Act, No later than September 1, 1996, the Department shall convey land of equal fair market value to the permanent school fund from other lands held by the Texas

Parks and Wildlife Department. The particular tracts of land to be conveyed to the permanent school fund shall be identified by the mutual agreement of the School Land Board and the Texas Department of Parks and Wildlife. Fair market value shall be determined in accordance with an appraisal of the properties by an appraiser mutually agreed to by the School Land Board and the Texas Parks and Wildlife Department.

SECTION 3. The transfer of land to the permanent school fund described in Section 2 of this Act will remove the land from the state park, wildlife management area, or scientific area and change the legal boundary of any affected state park, wildlife management area or scientific area accordingly.

SECTION 4. On or before December 1, 1996, the Texas General Land Office, the School Land Board, and the Texas Parks and Wildlife Department shall develop a plan for the removal or conveyance to the Texas Parks and Wildlife Department pursuant to one or more sales, exchanges, or other transfers, of the surface estate in real estate, other than mineral interests and other than submerged lands and tidelands, then dedicated to the permanent school fund that is located within the boundaries of any tracts managed by the Texas Parks and Wildlife Department, including, without limitation, any state parks, wildlife management areas, and scientific areas, but not including coastal preserves, which plan shall provide for fair market value compensation, in land or money, to the permanent school fund. The determination of fair market value will be in accordance with an appraisal mutually agreed to by the School Land Board and the Texas Parks and Wildlife Department.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to engrossment by a viva voce vote.

SENATE BILL 1525 ON THIRD READING

Senator Rosson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **S.B. 1525** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

(Senator Truan in Chair)

HOUSE BILL 2473 ON SECOND READING

On motion of Senator Brown and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2473, Relating to audits to determine compliance with certain laws, rules, and regulations; providing penalties.

The bill was read second time and was passed to third reading by a viva voce vote.

RECORD OF VOTE

Senator Zaffirini asked to be recorded as voting "Nay" on the passage of the bill to third reading.

HOUSE BILL 2473 ON THIRD READING

Senator Brown moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 2473** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Zaffirini.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 1. (Same as previous roll call)

(President in Chair)

SENATE BILL 1237 ON SECOND READING

Senator Armbrister moved to suspend the regular order of business to take up for consideration at this time:

S.B. 1237, Relating to smoking in public places and places of employment; providing criminal penalties.

The motion prevailed by the following vote: Yeas 21, Nays 10.

Yeas: Armbrister, Barrientos, Brown, Cain, Gallegos, Galloway, Harris, Henderson, Lucio, Luna, Madla, Montford, Nelson, Nixon, Patterson, Rosson, Shapiro, Sibley, Turner, Wentworth, Whitmire.

Nays: Bivins, Ellis, Haywood, Leedom, Moncrief, Ratliff, Sims, Truan, West, Zaffirini.

The bill was read second time.

(Senator Truan in Chair)

Senator Moncrief offered the following amendment to the bill:

Floor Amendment No. 10

Amend **S.B. 1237** as follows:

By inserting a new subsection (d) to proposed Sec. 165.009 to read as follows:

(d) Notwithstanding any other provision of this act, nothing in this act shall be construed to preempt a local ordinance, rule, or regulation adopted by a municipality, county, or other political subdivision which places greater restrictions on smoking in public places, in places of employment, or in outdoor areas.

The amendment was read.

On motion of Senator Moncrief and by unanimous consent, Floor Amendment No. 10 was temporarily withdrawn.

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 1

Amend S.B. 1237 by adding a new SECTION 2 to the bill (Senate committee report, page 4, between lines 10 and 11) to read as follows and renumbering the existing SECTION 2 and subsequent SECTIONS of the bill appropriately:

SECTION 2. Subchapter H, Chapter 161, Health and Safety Code, is amended by adding Section 161.083 to read as follows:

Sec. 161.083. POSSESSION OR USE OF CIGARETTES OR TOBACCO PRODUCTS BY MINORS IN PUBLIC PLACES OR PLACES OF EMPLOYMENT PROHIBITED. (a) A person who is younger than 18 years of age commits an offense if the person possesses or uses a cigarette or tobacco product in any public place or place of employment.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than \$25 or more than \$200 or by 25 hours of community service work.

The amendment was read and was adopted by a viva voce vote.

RECORD OF VOTE

Senator Leedom asked to be recorded as voting "Nay" on the adoption of Floor Amendment No. 1.

Senator Moncrief again offered the following amendment to the bill:

Floor Amendment No. 10

Amend S.B. 1237 as follows:

By inserting a new subsection (d) to proposed Sec. 165.009 to read as follows:

(d) Notwithstanding any other provision of this act, nothing in this act shall be construed to preempt a local ordinance, rule, or regulation adopted by a municipality, county, or other political subdivision which places greater restrictions on smoking in public places, in places of employment, or in outdoor areas.

The amendment was again read.

On motion of Senator Armbrister, Floor Amendment No. 10 was tabled by the following vote: Yeas 16, Nays 14.

Yeas: Armbrister, Brown, Cain, Gallegos, Galloway, Harris, Henderson, Lucio, Luna, Madla, Nelson, Patterson, Rosson, Shapiro, Turner, Whitmire.

Nays: Bivins, Ellis, Haywood, Leedom, Moncrief, Montford, Nixon, Ratliff, Sibley, Sims, Truan, Wentworth, West, Zaffirini.

Absent: Barrientos.

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 2

Amend **S.B. 1237** as follows:

- (1) On page 3, line 24, strike "50" and substitute "40".
- (2) On page 3, line 28, strike "where feasible".
- (3) On page 3, line 29, strike "four" and substitute "six".
- (4) On page 3, line 30, strike "ventilated, where feasible, and".
- (5) On page 3, line 36, between "area," and "or" insert "an in-door or out-door children's play area".
- (6) On page 3, line 63, strike "To the extent possible, existing" and substitute "Existing".

The amendment was read and was adopted by a viva voce vote.

(President in Chair)

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 3

Amend **S.B. 1237** as follows:

On page 3, line 47, following Section 165.007(a)(1), add a new subsection 2 to read as follows, "(2) Each employer shall adopt, implement and maintain a written employee smoking policy for application in places other than public areas, conforming to the provisions of this chapter. A copy of the policy shall be provided to all current employees after adoption of such policy, and to all future employees at the time of their entry into employment." and renumber the subsequent subsections appropriately.

The amendment was read.

On motion of Senator Armbrister and by unanimous consent, Floor Amendment No. 3 was withdrawn.

(Senator Cain in Chair)

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 4

Amend **S.B. 1237** as follows:

- (1) On page 2, line 26, strike "corridor or nursing home corridor that provides direct access to patients' rooms".
- (2) On page 2, line 28, following Section 165.003(3) insert "(4) a public area of a long-term care facility or any other area of a long-term care facility in which smoking is prohibited by law;" and renumber the subsequent subsections appropriately.
- (3) On page 2, line 63, strike Subsection 165.004(10).
- (4) On page 3, line 6, strike Section 165.004(14).
- (5) On page 3, line 13, strike "or long-term care facility".
- (6) On page 4, line 8, following "date;" delete "or".

(7) On page 4, line 10, following Sec. 165.009(c)(2) add "or (3) statutes, rules, ordinances, regulations or policies governing smoking in places of incarceration."

The amendment was read and was adopted by a viva voce vote.

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 5

Amend S.B. 1237 as follows:

(1) On page 2, line 44, strike "a public place or place of employment does not comply with the notice provisions of Section 165.006 or that".

(2) On page 2, line 47, Section 165.003, strike subsection (d).

(3) On page 3, line 41, strike "or post" and substitute "by posting".

(4) On page 3, line 42, between "is" and "allowed" insert "and is not".

(5) On page 4, line 11, at the end of Section 165.009, add "Section 165.010. PENALTY. Failure by an individual to comply with this chapter constitutes an offense punishable as a Class C misdemeanor. Suit may be filed by any person to enjoin any action prohibited by this chapter. Upon a finding by the court that the provisions of this chapter have been violated the court may issue an injunction. The court may award attorney's fees and costs of court to the prevailing party. It shall not be grounds for a cause of action under this section that an area has been designated non-smoking."

The amendment was read and was adopted by a viva voce vote.

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 6

Amend S.B. 1237 as follows:

(1) On page 3, line 70, following the period add, "This chapter does not preempt or supersede any ordinance, rule, regulation or statute relating to the sale or distribution of tobacco products."

(2) On page 4, line 1, strike Subsection 165.009(b) and substitute "(b) This chapter does not preempt an amendment to a local ordinance, rule, or regulation adopted at any time which brings the ordinance, rule, or regulation into conformity with this chapter."

(3) On page 4, line 7, strike "January 1, 1994" and substitute "the effective date of this Act".

(4) On page 4, line 21, strike SECTION 4 and SECTION 5 of the bill and substitute the following: "SECTION 4. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted."

The amendment was read and was adopted by a viva voce vote.

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 7

Amend S.B. 1237 as follows:

(1) On page 2, line 62, Section 165.004, strike subsection (9) and renumber the subsequent subsections appropriately.

(2) On page 2, line 69, Section 165.004(11), strike "a branch" and substitute "an agency".

(3) On page 2, line 70, Section 165.004(11), strike "state".

(4) On page 3, line 22, between "area" and the period insert "and in the bar area".

(5) On page 3, line 35, Section 165.005(d), strike "nonsmoking" and substitute "smoking".

The amendment was read and was adopted by a viva voce vote.

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 8

Amend S.B. 1237, page 3, by inserting a new subsection (12) to read as follows and renumbering the remaining subsections:

(12) the areas of a publicly-owned building that house the offices of an elected official, except to the extent those areas are designated by the elected official as nonsmoking areas;

The amendment was read and was adopted by a viva voce vote.

Senator Moncrief offered the following amendment to the bill:

Floor Amendment No. 9

Amend S.B. 1237 by adding a new SECTION 4 and a new SECTION 5 to read as follows, and renumber subsequent sections accordingly:

SECTION 4. Subtitle H, Title 2, Health and Safety Code, is amended by adding Chapter 165 to read as follows:

CHAPTER 165. SMOKING IN STATE
BUILDINGS OR MEETINGS

Sec. 165.001. PURPOSE

Sec. 165.002. DEFINITIONS

Sec. 165.003. SMOKING AT PUBLIC HEARING OR IN STATE
BUILDING; CRIMINAL PENALTY

Sec. 165.004. DESIGNATION OF SMOKING AREAS

Sec. 165.005. SIGNS

Sec. 165.006. REASONABLE EFFORT TO PREVENT SMOKING

Sec. 165.007. FACILITIES TO EXTINGUISH SMOKING
MATERIALS

Sec. 165.008. ADMINISTRATION; WAIVER

Sec. 165.009. INJUNCTION

CHAPTER 165. SMOKING IN STATE
BUILDINGS OR MEETINGS

Sec. 165.001. PURPOSE. The purpose of this chapter is to protect the public health, comfort, and environment by phasing in a prohibition of smoking in state buildings and at public hearings held by state agencies.

Sec. 165.002. DEFINITIONS. In this chapter:

(1) "Smoke," "smokes," or "smoking" includes:

(A) carrying or holding a lighted pipe, cigar, or cigarette of any kind or any other lighted smoking material, equipment, or device;

(B) lighting a pipe, cigar, or cigarette of any kind or any other smoking material, equipment, or device; or

(C) emitting or exhaling the smoke of a pipe, cigar, or cigarette of any kind or any other smoking material, equipment, or device.

(2) "State agency" includes an agency in any branch of state government.

(3) "State building" means a building wholly or partially owned or wholly leased by the state, but does not include property wholly leased for commercial purposes to a person or entity not a state agency or property wholly occupied by a commercial enterprise operated under a management agreement between a state agency and a person or entity not a state agency.

Sec. 165.003. SMOKING AT PUBLIC HEARING OR IN STATE BUILDING; CRIMINAL PENALTY. (a) Prior to September 1, 1996, a person commits an offense if the person smokes at a public hearing conducted by a state agency or in a state building and the person is not in an area designated as a smoking area under Section 165.004. On or after September 1, 1996, a person commits an offense if the person smokes at a public hearing conducted by a state agency or in a state building.

(b) Prior to September 1, 1996, it is an exception to the application of Subsection (a) that the person is smoking in a place in a state building for which a waiver has been granted under Section 165.008(b).

(c) An offense under this section is a Class C misdemeanor.

Sec. 165.004. DESIGNATION OF SMOKING AREAS. (a) Prior to September 1, 1996, and except as provided by Subsection (d), if the chief executive of a state agency decides to permit persons in parts of a state building occupied by that agency to smoke, the chief executive or the chief executive's designee shall designate areas as smoking areas. The lieutenant governor or speaker of the house of representatives or their designees, as appropriate, may designate areas as smoking areas in buildings occupied by the legislature. On and after September 1, 1996, no part of a state building occupied by a state agency may be designated a smoking area.

(b) The designation of smoking areas does not require an agency to make structural or physical modifications to accommodate the smoking areas, but existing physical barriers and ventilation systems shall be used to minimize the effects of smoke in adjacent nonsmoking areas.

(c) Each state agency shall develop, implement, and maintain a written smoking policy that accommodates the wishes of smoking and nonsmoking employees by designating smoking and nonsmoking areas. If a dispute arises, the preferences of nonsmokers shall be accommodated. This chapter does not prohibit a state agency from designating a place of employment in its entirety as a nonsmoking area.

(d) A smoking area may not be designated in:

(1) an elevator;

(2) a rest room;

(3) a service line, cashier area, over-the-counter sales area, or common traffic area; or

(4) a place in which smoking is prohibited by the fire marshal of the state or a political subdivision or by other law, ordinance, or rule.

Sec. 165.005. SIGNS. (a) Each state agency occupying a state building shall place signs visible at each entrance to an area in the state building occupied by the agency to notify persons entering the premises that smoking is prohibited or, prior to September 1, 1996, that smoking is prohibited except in areas designated as smoking areas.

(b) The person responsible for designating smoking areas in a state building shall post in a conspicuous place in any area designated as a smoking area signs stating that smoking is permitted in the area. The person may post signs in the premises stating "No Smoking" or "No Smoking Except in Designated Areas" as appropriate. By September 1, 1996, each "No Smoking Except in Designated Areas" sign shall be replaced by a "No Smoking" sign.

Sec. 165.006. REASONABLE EFFORT TO PREVENT SMOKING.

(a) A person authorized to designate smoking areas under Section 165.004(a) shall make a reasonable effort to prevent smoking by:

(1) designating any areas where smoking will be permitted as required by Section 165.004;

(2) posting signs as required by Section 165.005; and

(3) asking smokers to refrain from smoking in all nonsmoking areas on request of a client, patron, or employee suffering discomfort from the smoke.

(b) If a smoker refuses to comply with a request to refrain from smoking, an affected person may bring an action as provided by Section 165.009.

(c) This section expires September 1, 1996.

Sec. 165.007. FACILITIES TO EXTINGUISH SMOKING MATERIALS. (a) All state buildings shall be equipped with facilities for extinguishing smoking materials.

(b) Facilities for extinguishing smoking materials that are located in areas of state buildings other than designated smoking areas shall be accompanied by clearly visible signs stating "No Smoking."

Sec. 165.008. ADMINISTRATION; WAIVER. (a) The board shall adopt rules necessary under this chapter and shall implement and determine compliance with this chapter.

(b) Prior to September 1, 1996, the commissioner may, on request of a person authorized to designate smoking areas under Section 165.004(a), waive the requirements of this chapter if the commissioner determines that there are compelling reasons to do so and that the waiver will not

significantly affect the health and comfort of nonsmokers. No waiver may be granted on or after September 1, 1996.

Sec. 165.009. INJUNCTION. The board, another state agency, or any affected person may bring an action in any court of competent jurisdiction to enjoin a violation of this chapter.

SECTION 5. Each state agency required to adopt a written smoking policy under Subsection (c), Section 165.004, Health and Safety Code, as added by this Act, shall adopt the policy not later than January 1, 1996.

The amendment was read.

Senator Armbrister offered the following amendment to Floor Amendment No. 9:

Floor Amendment No. 9A

Amend Floor Amendment No. 9 to **S.B. 1237** as follows:

On page 3, between lines 16 and 17 insert the following new subsection (b) and renumber accordingly:

(b) Notwithstanding Section 165.003 or subsection (a) of this section, an elected official may authorize smoking in the areas of a publicly-owned building that house that public official's offices. Section 165.003 and subsection (a) of this section apply to an area of publicly-owned building that house that public official's offices to the extent that they are designated as nonsmoking areas by the public official.

The amendment to Floor Amendment No. 9 was read and was adopted by the following vote: Yeas 21, Nays 10.

Yeas: Armbrister, Barrientos, Bivins, Brown, Cain, Gallegos, Galloway, Harris, Haywood, Henderson, Lucio, Luna, Madla, Montford, Nelson, Nixon, Patterson, Rosson, Turner, West, Whitmire.

Nays: Ellis, Leedom, Moncrief, Ratliff, Shapiro, Sibley, Sims, Truan, Wentworth, Zaffirini.

Question recurring on the adoption of Floor Amendment No. 9 as amended, the amendment as amended was adopted by a viva voce vote.

RECORD OF VOTE

Senator Henderson asked to be recorded as voting "Nay" on the adoption of Floor Amendment No. 9 as amended.

The bill as amended was passed to engrossment by the following vote: Yeas 19, Nays 12.

Yeas: Armbrister, Barrientos, Brown, Cain, Gallegos, Galloway, Harris, Henderson, Lucio, Luna, Madla, Montford, Nelson, Nixon, Patterson, Rosson, Turner, West, Whitmire.

Nays: Bivins, Ellis, Haywood, Leedom, Moncrief, Ratliff, Shapiro, Sibley, Sims, Truan, Wentworth, Zaffirini.

MESSAGE FROM THE HOUSE

House Chamber
May 9, 1995

Mr. President: I am directed by the House to inform the Senate that the House has passed the following:

H.C.R. 188, Rejecting NASA contentions regarding the Johnson Space Center and memorializing congress to countermand the NASA proposal to consolidate and downsize the operations of the center.

H.C.R. 198, In memory of Dr. Lloyd D. Vincent.

H.C.R. 199, Instructing the enrolling clerk of the House to correct spelling errors in **H.B. 383**.

S.B. 927, Relating to the conveyance of a Texas Turnpike Authority project.

S.B. 771, Relating to the authority of a county to lease real property to certain organizations and to the procedures for such leases.

S.B. 779, Relating to allowing certain counties to establish a central mailing system.

S.B. 833, Relating to application of the sales and use tax to certain aircraft.

S.B. 701, Relating to the creation of municipal courts of record in Grand Prairie. (As amended)

Respectfully,

Cynthia Gerhardt, Chief Clerk
House of Representatives

HOUSE CONCURRENT RESOLUTION 199

The Presiding Officer laid before the Senate the following resolution:

H.C.R. 199, Instructing the enrolling clerk of the House to correct spelling errors in **H.B. 383**.

SHAPIRO

The resolution was read.

On motion of Senator Shapiro and by unanimous consent, the resolution was considered immediately and was adopted by a viva voce vote.

HOUSE CONCURRENT RESOLUTION 188

The Presiding Officer laid before the Senate the following resolution:

H.C.R. 188, Rejecting NASA contentions regarding the Johnson Space Center and memorializing Congress to countermand the NASA proposal to consolidate and downsize the operations of the center.

BROWN

The resolution was read.

On motion of Senator Brown and by unanimous consent, the resolution was considered immediately and was adopted by a viva voce vote.

REPORT OF COMMITTEE ON NOMINATIONS

Senator Bivins submitted the following report from the Committee on Nominations:

We, your Committee on Nominations, to which were referred the following appointments, have had same under consideration and report them back to the Senate with a recommendation that they be confirmed.

To be Members of the UNIVERSITY OF NORTH TEXAS BOARD OF REGENTS: Jerry Farrington, Dallas County; Lucille Gannon Murchison, Dallas County; Topsy Wright, Dallas County.

To be Members of the TEXAS STATE TECHNICAL COLLEGE SYSTEM BOARD OF REGENTS: Nat Lopez, Cameron County; Charles D. Olson, McLennan County; Tom L. Ragland, McLennan County.

To be Members of the AGRICULTURE RESOURCES PROTECTION AUTHORITY: Larry Edward Smith, Knox County; Max Woodfin, Travis County.

To be Members of the ANTIQUITIES COMMITTEE: Dr. James E. Corbin, Nacogdoches County; Betty N. Murray, Cameron County; Dr. Marion Oettinger, Jr., Bexar County.

To be Members of the TEXAS COMMISSION ON FIRE PROTECTION: David Abernathy, Camp County; Chief Juan J. Adame, Nueces County; Captain Marvin G. Dawson, Terry County; Jon M. Hutchens, Harris County; Chief Ronnie E. James, Wichita County; Gilbert Robinson, Galveston County; Captain Ricardo Saldana, Hidalgo County; Kelley Martin Stalder, Collin County; Carl Dewayne Wren, Travis County.

To be JUSTICE OF THE COURT OF APPEALS, FOURTEENTH COURT OF APPEALS DISTRICT: Judge Harriet O'Neill, Harris County.

To be Members of the TEXAS BOARD OF NURSING FACILITY ADMINISTRATORS: Johnnie Lou Avery, Howard County; Helen Anderson Beasley, Lubbock County; Thomas William Gard, Jefferson County; Merrill M. Grey, Collin County; Cheryl L. Killian, Tarrant County; Johnnie Richardson, Harris County; Michael O. Sims, McLennan County.

To be Members of the TEXAS REAL ESTATE COMMISSION: Jay Brummett, Travis County; Christine T. Folmer, El Paso County; Deanna Mayfield, Tom Green County.

NOTICE OF CONSIDERATION OF NOMINATIONS

Senator Bivins gave notice that he would tomorrow at the conclusion of morning call submit to the Senate for consideration nominations to agencies, boards, and commissions of the state.

**NOTICE OF SESSION TO HOLD
LOCAL AND UNCONTESTED BILLS CALENDAR**

Senator Harris announced that a Local and Uncontested Bills Calendar had been placed on the Members' desks and gave notice that a Local and Uncontested Bills Calendar would be held at 7:45 a.m. tomorrow and that all bills would be considered on second reading in the order in which they are listed.

**SENATE RULE 11.19 SUSPENDED
(Posting Rule)**

On motion of Senator Henderson and by unanimous consent, Senate Rule 11.19 was suspended in order that the Committee on Jurisprudence might consider **S.B. 34** today.

**SENATE RULE 11.19 SUSPENDED
(Posting Rule)**

On motion of Senator Whitmire and by unanimous consent, Senate Rule 11.19 was suspended in order that the Committee on Criminal Justice might consider the following bills and resolution today:

**S.C.R. 137
H.B. 949
H.B. 2278**

**SENATE RULE 11.19 SUSPENDED
(Posting Rule)**

On motion of Senator Ellis and by unanimous consent, Senate Rule 11.19 was suspended in order that the Committee on Intergovernmental Relations might consider **H.B. 1824** tomorrow.

**SENATE RULE 11.19 SUSPENDED
(Posting Rule)**

On motion of Senator Brown and by unanimous consent, Senate Rule 11.19 was suspended in order that the Committee on Natural Resources might consider the following bills today:

**S.B. 1709
H.B. 2587**

MEMORIAL RESOLUTIONS

S.R. 1004 - By West: In memory of Michael Wayne Terrell.

H.C.R. 198 - (Wentworth, Montford): In memory of Dr. Lloyd Drexell Vincent of San Angelo.

CONGRATULATORY RESOLUTIONS

S.C.R. 139 - By Montford: Honoring Major General William Edgar Murphy and naming the Texas Army National Guard/Reserve Center in Lubbock the William Edgar Murphy Guard/Reserve Center.

S.R. 991 - By Shapiro: Recognizing Jonnie and Gerhard Schulz of Collin County for their voluntary work on behalf of the Republican Party.

S.R. 992 - By Ellis: Commending Autry Henry, founder of Houston Friends of Literacy, for her contributions to the Hobby community of Houston.

S.R. 993 - By Ellis: Commending Frank Jones and his grandson, Craig Joseph, as outstanding citizens and restaurateurs of Houston.

S.R. 994 - By Ellis: Congratulating Reva Stern on receiving the Marcia Sheena Memorial Award from the Congregation Brith Shalom Sisterhood.

S.R. 995 - By Ellis: Congratulating Anthony W. Hall, Jr., of Houston on his election to the Junior Achievement National Board of Directors.

S.R. 996 - By Ellis: Congratulating Debra Nash on being named manager of the Bank One Houston new Tidwell banking center.

S.R. 997 - By Ellis: Congratulating John Biggers of Houston for his exhibition at the Museum of Fine Arts in Houston.

S.R. 998 - By Ellis: Congratulating Azalia Orner of Harris County for earning the Silver Award in the Scholastic Writing Awards of 1995 Contest.

S.R. 999 - By Ellis: Congratulating Boris Kerzner of Harris County on receiving the Gold Award in the Scholastic Writing Awards of 1995 Contest.

S.R. 1000 - By Ellis: Congratulating Liraz Kamely of Harris County on being recognized for excellence in writing in the Scholastic Writing Awards of 1995 Contest.

S.R. 1001 - By Ellis: Congratulating Minyon Moore on being appointed to serve as Political Director of the Democratic National Committee.

S.R. 1002 - By Ellis: Congratulating Sherita Jackson of Westbury High School on being named Athlete of the Week by the *Houston Forward Times*.

S.R. 1003 - By Ellis: Congratulating Dameshia J. DeFlora on being awarded the Black Engineer of the Year—Student Leadership award by the Career Communications Group.

S.R. 1005 - By Cain: Congratulating Mr. and Mrs. Robert Stapp of Leonard on their 60th wedding anniversary.

S.R. 1006 - By Cain: Congratulating Mr. and Mrs. Joe Jones of the Dixon Community on their 65th wedding anniversary.

S.R. 1007 - By Cain: Congratulating the Reverend and Mrs. Roland Ratliff of Conway, Arkansas, on their 55th wedding anniversary.

S.R. 1008 - By Cain: Congratulating Mr. and Mrs. Cletus Mullins of Houston on their 50th wedding anniversary.

S.R. 1009 - By Cain: Congratulating Mr. and Mrs. Loyd Thomas of Cumby on their 60th wedding anniversary.

RECESS

On motion of Senator Truan, the Senate at 12:03 p.m. recessed until 7:45 a.m. tomorrow for the Local and Uncontested Bills Calendar.

APPENDIX

REPORTS OF STANDING COMMITTEES

The following committee reports were received by the Secretary of the Senate:

May 9, 1995

ECONOMIC DEVELOPMENT — **S.B. 1670** (Amended)

JURISPRUDENCE — **H.B. 673, H.B. 2093, H.B. 2268, H.B. 172, H.B. 654, H.B. 1136, H.B. 2020, C.S.S.B. 34, C.S.S.B. 1334, C.S.S.B. 1214**

FINANCE — **H.B. 2182, S.B. 1559, H.J.R. 64, C.S.H.B. 1587, H.B. 1564, H.B. 1434, H.B. 1127** (Amended), **H.B. 1583** (Amended), **S.B. 1659, S.B. 1151** (Amended), **C.S.S.B. 1564, C.S.S.B. 1658, C.S.S.B. 767**

SIGNED BY GOVERNOR

(May 8, 1995)

H.B. 736 (Effective immediately)

H.B. 2049 (Effective immediately)

H.B. 2050 (Effective immediately)

H.C.R. 180

SENT TO GOVERNOR

(May 9, 1995)

S.C.R. 126	S.B. 31	S.B. 1018
S.C.R. 132	S.B. 32	S.B. 1032
S.B. 12	S.B. 297	S.B. 1241
S.B. 360	S.B. 365	S.B. 1281
S.B. 368	S.B. 424	S.B. 1284
S.B. 410	S.B. 694	S.B. 1299
S.B. 529	S.B. 717	S.B. 1327
S.B. 548	S.B. 731	S.B. 1328
S.B. 688	S.B. 875	S.B. 1387
S.B. 1060	S.B. 934	S.B. 1627
S.B. 1098		